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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

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EVIDENCE LAW OF DHARMASHASTRA - IN THE SHADOW OF NARADIYA DHARMSHASTRA

AUTHORED BY - KESHAV DEV

1.1. Introduction

Although thousands of researchers have done a lot of research on Smriti texts in the last two and a half hundred years, but still each person discovers many new things according to himself and expresses the old methods according to his understanding. According to this principle, I have also studied India's oldest written law books, as well as whatever new I found in them and what I learned after studying them, I am expressing here through this article.

Smriti Granthas (*Dharmashastras*) are the oldest written social and legal document not only in India but also in the world by which a large part of human civilization has been regulated for thousands of years. These are not only the scriptures of the ancient Vedic religion of India, but in them we have got the inspiration for the law and order of all times of India as well as the developed legislation of the present time.

Smriti texts have been called Dharmashastras since ancient times. And literally the word Dharma means those systems which regulate the society and by which man achieves a well-ordered life and by which the duties and rights of every individual of the society are definitely determined.

In general sense "Smriti" means memory, because Smriti is a word of Sanskrit language or in English memory is the similar word of Smriti.

But here we are talking about the Smriti texts and ancient text from in India, which was code of conduct containing Vedic knowledge based on the memory of ancient well wisdom sages (rishies). Also the writer of ¹*amarkosh* AmarSen has described Smriti as dharmshastra. Therefore smriti's can

¹ Amarkosh-Amar Sen- chaukhamba publication Varanasi 2006 page 180, this is second century CE book or collection

be considered as the first law books of India which were written by human being of their knowledge basis as the definite arrangement for all sections of the society at the different times According to ²*Paniniya vyakarana* the oldest systematic book of Sanskrit grammar 600BCE - "Smri' dhatu or 'Ktina' pratyay are making a word. According to *Vachaspatyam*³ an excellent dictionary of Sanskrit words written by Taranath vachaspati in 1866 -1884 has described the word Smriti is with reference of amarkosh- "sensed object in the form of exortation and is subject to Sanskar that is Smriti or a book composed according to vedar tha with memory power is Smriti Granth".

So in short words Smriti granthas are not written by a human at one time because these texts are written by various persons at different time to give a systematic laws for all the sections of society. And the person who wrote the Smriti called "*SmritiKara*".

As we learned above what is the meaning of Smriti text now here we will know about those Smriti is whose manuscripts have been received in very ancient form and those who have been considered helpful in determining the acts in the present Hindu family law whose influence we can still see on different types of family issues in different regions of India.

There are considered to be a total ⁴of 12 such main Smriti texts, some of these are huge and some of them are very small here we can see the names -

1. Manusmriti 2. Yajnavalkya Smriti. 3. Parashar Smriti. 4. Brihaspati Smriti. 5. Shukra Smriti as shukra samhitha 6. Katyayna Smriti. 7. Aap stambha Smriti. 8. Aatri Smriti. 9. Gautama Smriti. 10. Vashishtha Smriti. 11. Shankh & likhit Smriti . 12. Narada Smriti

According to historians and the scholars Smriti text was written 800 BCE to 6th century CE. Traditionally, Dharmashastras or Smritis have been considered very ancient, which goes back to thousands of years BCE.

The present article is based on the provisions of Evidencial law under Narada Smriti or Narada Dharmashastra, one of the most ancient Dharmashastra of India, in which we will reach its upcoming conclusion by looking at and examining various facts.

of words like dictionary.

² Paniniya Ashtadhyayi - chaukhamba pratishthan Varanasi 2008,page 482

³ Vachaspatyam -IIT telecom digital University conversion pdf 2017 page 64,

⁴ ManuSmriti - Pandit Girija Prasad Dwivedi -Preface page 22 -Naval Kishor press Lucknow 2012

⁵*Dharmarth -Kama-mokshanam-upadesh samanvitam*

Purvrittam Kathayuktam Itihasaam Prachakshate. (Vishnu Dharmeta Samhita, 3/15/1)

The meaning of this verse is that those ancient details and stories from which we get inspiration, preaching and education to achieve Dharma, Artha, Kama and Moksha which are the 4 great goals of human life are called history. Knowledgeable history is not just a collection of stories. Rather, it also teaches us to make our present and future society advanced and prosperous. This verse, said in the book *Vishnu Dharma Samhita*, is the first definition of history in Indian belief, which is superior and inspiring than all the definitions of the word or subject of history found in other civilizations.

Taking inspiration from this verse, I studied ancient Indian Smritis along with other books of law, during which I got a lot of new and good information, which is very important and guide for a law student.

Narad Smriti is such a book, which according to size is half of the currently available Manusmriti and is better than it in terms of subject matter.

Many researchers have also called this book the ancient first Indian procedural law book, because in this we get a very systematic mention of civil law and commercial law.

And it is also true that before the creation of the present Indian evidence law, western scholars had done research on Narad Smriti for many years, the proof of which is that the western scholar named ⁶*Max Müller* had highly praised this book and said -

"If Narad Smriti had been specimen the first translation of Hindu literature in European languages it would have been accepted as a universal law book."

The description of the ancient evidence law found in this book is very well developed, systematic and modern as compared to other ancient Indian Smritis and if we get to see such a good system in any ancient book than this book, it is only Kautilya's Arthashastra. that's why choose this topic.

⁵ Vishnu Dharma Samhita - Gita press Gorakhpur ,1993, page 138

⁶ The sacred books of the East- Max Muller-xxxiii, page 122 -1879 - Oxford press-cultural institute of Delhi 1998

1.2. Origin & Importance of Dharmashastra

"*Dharmashastra*" emerged to give a definite well-organized system of conduct to the human society. Within it, a system was given for the behavior arising from every reaction of human nature. Under which there were not only law and justice but also rules related to social conduct and behavior, personal conduct and behavior, spiritual thoughts etc.

According to the ancient traditional Indian view, the Dharmashastriya legal system is the world's first known well-organized legal system.

According to *Rigveda*, Maharishi Manu is considered to be the originator of Dharmshastras (Rigveda⁷ -8/51/1,8/52/1,8/63/1, ⁸Taittiriya samhita- 2/10/2, Tandy ⁹Brahman -23/16/217)

The form of Dharmashastra or Smriti Texts that we are seeing today is a fragmented and destroyed form of Dharmashastra. The early and original Dharmashastra composed by *Maharishi Manu* is a large¹⁰ code with 100000 verses & 1008 chapters and 24 Prakarnas, which he taught to his 10 main disciples and divided it into 10000 verses and gave it to each disciple.

1. Marichi, 2. Atri, 3. Angira, 4. Pulastya, 5. Pulaha, 6. Kritu, 7. Pracheta, 8. Vashishtha, 9. Bhrigu, 10. Narada (¹¹Manusmriti 1/35)

Who converted this huge code of Manu into 10 small Dharmashstras who are today known by the name of these sages.

The Manusmriti that we have today is actually Bhrigusmriti which is a code of 10000 verses given by Maharishi Manu to his disciple Bhrigu.

The sages of that time and those who followed Manu, composed Smritis in their own way to provide order & System to the human society on the basis of their Vedic knowledge and experience. At present

⁷ Rigveda - Part 3, Acharya vedanta tirtha -Manoj Publication Delhi, Edition 4rth 2012, Page no.354,356,374

⁸ Taittiriya samhita-chaukhamba Sanskrit pratishthan Delhi 2013, Page 74

⁹ Tandy Brahman - Sayan bhashyam-pt. Anand Chandra Vedant vagish-chaukhamba Sanskrit Pratishthan Delhi 2012, Page 358

¹⁰ Narada-smriti - Dr. Ramkumar Verma Shastri - Dynamic Publication Meerut U.P. ,2005 2nd edition Page No.11-12, Mahabharat -Shanti parva - Rajdharma parva -Geetapress Gorakhpur, Part 5, 2015 Page 843 Pt. gopal shastri nene-Manvarthamuktawali (Manusmriti)- Kulluka Bhatt - Chaukhamba sanskrit series Varanasi 2014 edition -8th, pages -15,16,17

¹¹ Manusmriti - Pandit Girija Prasad Dwivedi-Nawal Kishore press Lucknow 1917 edition -1st, Page - 7

there are 56 Smriti texts available, out of which only 12 Smriti texts were considered helpful in the formation of the present Hindu law.

It is true that over the course of thousands of years, many changes have taken place in the Smriti texts, many things have been added to them due to which they have also become fragmented, but their original form and principles have not been completely destroyed but are still present in the Dharmashastras.

In this way we can see that Manusmriti, which was once a code of 10,000 verses, today contains a total of two and a half thousand verses. Most of the scholars consider only ¹²1200 of them as important. In this way, other Smriti texts have also remained very little from their main form.

Here we will learn about the systems obtained from the Smritis, Dharmashastras, which were used to appoint courts and judges and run the judicial process.

***"Shrutistu vedo¹³ vijyeyo dharmashastram tu va smriti sarvartheshvamimansye tabhyaam dharmao hi nirbabbhau."* (Manusmriti 2/10)**

It means Shruti is called Veda and Smriti is called Dharmashastra. These two are undisputed in all matters of duty, because Karma-Dharma has been revealed from them. Because Dharma is known accurately through these texts, that is why they are called Shastras (scriptures) of Dharma - Dharmashastra (Smrities).

Smriti texts have been called Dharmashastras since ancient times and literally the word Dharma means those systems which regulate the society and by which man achieves a well-ordered life and by which the duties and rights of every individual of the society are definitely determined.

Dharma can also be taken in this perspective, "That all those rules and principles which govern human nature provide an orderly and dignified way of life to human society and whose non-compliance causes harm to any individual or society and leads to violation and encroachment of his rights and for

¹² Vishuddh Manusmriti- Dr. Surendra Kumar Arya-Ved Rishi Prakashan Delhi 2019, Edition 2, Preface

¹³ Manusmriti - Pandit Girija Prasad Dwivedi-Nawal Kishore press Lucknow1917edition -1stPage 24

which penal system and judicial process have been arranged. These principles and rules are followed and propounded by the state and are natural.

Thus we can say that the word Dharma has nothing to do with worship, worship of God and spiritualism. It is directly related to society and human interests and to establish order. In common language, it can also be called legal law or code of conduct.

Some people also associate the word Dharma with responsibility or duty. Our duties and responsibilities towards the society all come under Dharma. While explaining the word Dharma in Dharmashastra, the Dharmashtrakaras (the writer of Dharmashstras) have given mainly 10¹⁴ characteristics of it -

Dhriti-Kshama-Damoasteyam-Shauchamindriyanigraha,

Dhirvidya-Satyamkrodho- Dashakam Dharma- Lakshanam // (Manusmriti 6/92)

1. ***Dhriti*** - Patience
2. ***Kshama***- Pardon
3. ***Dama*** - self-control and suppression of one's desires
4. ***Asteya*** - not to infringe upon the rights of others, Do not take or steal someone else's things
5. ***Shaucha*** - To be pure in body, mind and thoughts
6. ***Indriya-Nigraha*** - control oneself and one's senses
7. ***Dhi*** - stable and knowledgeable mind wise mind
8. ***Vidya*** - Knowledge
9. ***Satya*** - Truth
10. ***Akrodh*** - absence of anger

This is Dharma and anything different or outside from it is not Dharma. If seen from a microscopic point of view, actually the reason behind the law is the presence or absence of these 10 symptoms.

¹⁵Ahimsa-Satyamasteyam Shauchamindriyanigraha: -Daanam -Damo Daya-Shanti:-Sarveshaan-Dharmasadhanam. (Yajnavalkya Smriti 1/2/22)

¹⁴ Manusmriti - Pandit Girija Prasad Dwivedi-Nawal Kishore press Lucknow 1917, edition -1st, Page 205

¹⁵ Yajnavalkya smriti - Pandit Girija Prasad Dwivedi-Nawal Kishore press Lucknow 2015, edition -14 th, page 28

Thus, 10 characteristics of dharma have been mentioned in different Dharmshastras.

If we talk about the antiquity of Dharmashastra, then there are two opinions in this regard. The first opinion is the ancient traditional Indian belief, according to which Dharmashastra originated from Manu and is thousands of years old and the sage who wrote them is called Rishi As ancient as it is. its written Smriti are equally ancient. According to this, the oldest dharmshastra is Manusmriti and the last Dharmshastras are considered to be Parashar and Vyas Smriti. Some scholars consider Kautilya's Arthashastra as the last Dharmashstra.

According to the second opinion based on various researches done by modern researchers, historians and scholars, the Dharmashastra was composed ¹⁶from 800 BC to 6th century AD and according to these Smriti texts, Indian social and family law has been governed till now. No matter how many inconsistencies, errors and interpolations there may be in the Smriti texts (Dharmashastras) today, they are still a mirror of our ancient judicial- legal system.

1.3. The Institute of Narada

Narada Smriti or Narada Dharmashastra is one of the oldest texts of the Dharmashastras tradition of India and it is the most modern law book of that time according to its period. In comparison to other Smriti texts, there is no mention of excessive waste rules, caste system, rules of worship and religious things. Rather, in this, solving the practical problems prevalent in the society at that time and the complex system rules given by other Smritis have also been simplified and modified and expressed by making them useful for every section of the society. Briefly about this Naradiya Dharmashastra we can understand in these three headings -

A. The Author of Narada Smriti

The creator of the Narada Smriti is generally believed to be the sage Narada, after whom the book is named. All historians and legal scholars may not agree on the fact that Narada Smriti is a creation of a certain period, but they definitely agree that Narada Smriti is an ancient Indian Smriti and the name of its creator which is mentioned in this book. It has been taken many times, it must have been Narad. Thus if we explore the ancient texts in Indian history, we find very detailed mention of a divine

¹⁶ Dharm Shastra ka itihaas - P.V.Kane , volume -1, Hindi samiti suchna vibhag Lucknow 1962, edition 1st, Page- 7

sage named Narada and he is traditionally believed to be the author of Narada Smriti and many other texts. Thus if we explore the ancient texts in Indian history, we find very detailed mention of a divine sage named Narada and he is traditionally believed to be the author of Narada Smriti and many other texts.

Sage *shaunaka*¹⁷ of the Mahabharata period, who is believed to be the author of many ancient Vedic texts and the originator of the Krishna Yajurveda. According to the oldest text Brihad Devata which deals with sage, deities and verses of the Vedas written by Rishi saunaka. According to this text, Narada is the visionary sage of some suktas⁽¹⁸Rigveda-8/13,9/104,105) of the Rigveda. But there is no mention of Narada in Rigveda, but a clear mention of Narada is found under Atharva Veda⁽¹⁹Atharva Veda - 12/4/16,24,41,42,43,45). Narada is not mentioned only in the Vedas, but we also find the mention of Narada in the Brahmin texts and Upanishads, which are considered subdivisions of the Vedas, and we also find many²⁰*Upanishadas* in the name of Narada. Apart from this, Naradiya Shiksha Vedang, one of the Vedangs, was also composed by Narad, which is considered to be the oldest Vedang. Most mention of Narada is found in Valmiki Ramayana Mahabharata 18 Puranas and from these only complete information about Narada is available. In Buddhist²¹ and Jain texts also the character named Narad is mentioned with great respect and respect. Ine buddhi se deyar have bin 28 buddhas before Siddharth Gautam Buddha and narada is a 24th Buddha according to kulla narada Jataka text of Buddhism. According to anath dasi Jataka narada is a divine sage at the time of first Buddha Padamottara-Buddha. So, on the basis of all these mentions and evidences, we can say that there must have been a great personality named Narad in ancient India, who must have been a learned and intelligent person. who must have been the author of many texts. Regarding the period of Narad, Vedic Jain and Buddhist texts of all three religions unanimously accept that Narad must have been an ancient sage at the time when all these texts were written, so the lifetime of Narada is before Vedic Jain and Buddhist texts. may be considered. Most of the modern historians also agree on this, but they tell the time of Narada between 900 and 800 BC. At present, a total of 6 texts written by Narad are

¹⁷ Brihaddevta - Shaunaka - Ram Kumar Ram- chaukhamba Sanskrit Sansthan Varanasi- page- 167

¹⁸ Rigveda Samhita - Manoj publications 2014 Delhi, part-3 page -232, part -4 page - 188-189

¹⁹ Atharva Veda - part 2, Manoj publication Delhi 2014 page 122 -130

²⁰ Brihannaradiya upanishada- upanishada sangraha - Pt. Jagdish Shastri Motilal Banarasi Das press Varanasi 2005 page 102, Naradiya Shiksha Vedang, - Shri pitambara peeth Sanskrit Parishad datiya, M.P. Bhatt shobhakar 2011

²¹ Trishanshilaka purusha charitra - jainendra press, 2014, Lalitpur jhansi page 101-105, Lalit Isahitya evam nataka- pandit sundarlal Sharma open University Chhattisgarh Bilaspur 2016, page 5-128

found, in which the ancient Narad is not mentioned in the ancient texts.

B. The timeline of Narad Smriti

In²² 1876 manuscript of Narada Smriti was translated by the German scholar **Julius Jolly** making it available to legal scholars in Europe for the first time the work was readily accepted in Europe due to its style content and structure which was similar to Roman legal text of the time that scholars self comfortable dealing with it. According to internal and external mentions of Narad Smriti ²³**Dr. PV Kane** consider it to be first century BCE to second century AD composition due to the mention of a currency called Dinar within it (Narad Smriti 18/60,2/34). But some historians disagree with this because they believe that the date currency had arrived in India only in 700 BC because it is considered to be the first trend in the country of Persia, after which it reached the world through Rome and Greece. Because the mention of Narada Smriti is also found in many ancient Smritis which are also mentioned by **Kautilya** in his ²⁴**Arthashastra** and Narada Smriti is also mentioned in Arthashastra by the name of Kautilya Pishun Niti because this Pishun name is used for Narada in Narada Purana, happens to have done. Narada is also named in the manusmriti in 10 oldest dharmshastrakaras. In **prayog²⁵ parijata** (1/38) **Paithinasa Smriti**(1/7) narada also mentioned as a great Smriti Kara or Narad Smriti a great Smriti in 38 great Smrities. After studying the facts, arguments and proofs given by the above scholars and after getting the mention of Narad Smriti in other ancient texts and keeping in mind the period of these ancient texts, we can say that Narad Smriti was written between 400 BC to 1st century AD. It must have been prevalent till the middle of the century, so we can consider this time as the time of its creation and circulation.

The first foreign scholar to do research on Narada Smriti was Jullius Jolie and Max Müller, and the commentary received on Narada Smriti in India is found by a scholar named ²⁶**Asahaya** who lived in the 750 century. 12th century inscription in Champa empire of king Jay Hari varman in what is now modern Vietnam declares that it's Court officials were expert in all dharamshastra specially naradiya dharmshastra (Narad Smriti) and Bhargaviya dharmshastra(manusmriti). According to the above

²² The minor law books by Jolly Julius- Oxford the Cleveland and press 1885

²³ Dharm Shastra ka itihaas- panduranga vamaana kane- vol.1-Uttar Pradesh Hindi Sansthan Lucknow 1986 page 274

²⁴ Kautilya Arthshastra- dynamic publication meerut ,2016(1/16/6), Manusmriti -Manoj publication Delhi (1/35)2009

²⁵ Prayog parijat- chaukhamba publication Varanasi1998 , Paithinasa Smriti-Varanasi Sanskrit pratishthan Varanasi 2007

²⁶ Prachin Hindu vidhi ke Vikas mein naradiya Smriti ka avdan - Dr. Ramsamujh -2022, Kala Publication BHU Varanasi Page 14-16

modern scholars, at present 3 types of Narada Smriti have been found from different places - first version have 879 verses second version have 550 verses and last or most popular and important version have 1028 verses. On this basis it also has 3 names 1. laghu naradiya dharmshastra. 2. Narad Smriti 3. brihannaradiya Smriti.

C. The content of Narad Smriti

Jullius Jolly ²⁷ later edited the text to include verses from the minor text bringing the total 1028 verses. There is not much difference between all the three types of Narad Smriti, that is why the part with the last 1028 verses is the most prevalent and valid at present, which was edited by Julius Joli in 1888. At present 18 titles devoting a chapter to each called upadhana or 1028 slokas exist in Narada Smriti. In this research paper of ours also, I will study and discuss this from Narada Smriti with 18 vyavharpada (chapters) and 1028 verses.

Narada Smriti is not a separate Dharmashastra in itself, but it is a part of the ancient Dharma Shastra Kar Manu's Dharma Shastra, a part of which is also called Manusmriti. According to an ancient text Manvarthamuktavali Dharmashastra Kar Manu composed a huge Dharma Shastra of 100,000 verses, out of which Manu taught ten thousand verses to his ten different disciples and the same ten different disciples taught those different aspects of Dharmashastra. 10 parts were given the form of memories, one of those 10 disciples of Manu is also called Narad. The discussion of these 10 disciples is also found in the present ²⁸ Manusmriti in the form of ten Dharmashastrakaras (1/35). Thus we can also say that Narada Smriti is a part of Brihad Manu Smriti.

The content of ²⁹ Narad Smriti divided in 18 vyavharpada (chapter's)-

1. Rinadanam, 2. Upanidhi, 3. Sambhuyasamutthan, 4. Dattapradanikam, 5. Ashushrushabhyupetyam, 6. Vetanasayapkarma, 7. Aswamivikraya, 8. Vikriyasampradanam, 9. Kritanushaya, 10. Samasyanpakarma, 11. Seemabandha, 12. Stripunsayoga, 13. Dayabhaga, 14. Sahasam, 15. Steyam, 16. Vakparushyam, 17. Dandaparushyam, 18. Dhutasamaruhyam

Apart from these, there is also a last chapter in Narad Smriti, which also has provisions which are not given in other chapters or are complementary to the provisions of other chapters. This is called

²⁷ Institute of Narada-The minor law books by Jolly Julius- Oxford the Cleveland and press 1885, Preface

²⁸ Manusmriti -Manoj publication Delhi 2009 page number 145

²⁹ Narada Smriti - Dr. Ramkumar Verma Shastri - Dynamic publication Meerut, 2003 Pages 18-20

Prakirnaka, which is believed to be a residual or an added part of it.

2.1. Brief Introduction of Evidence law

As we have just got a brief introduction about Narad Smriti, now we will know a brief introduction regarding the current evidence law, which will help us to understand the purpose of this article.

i. Meaning & Definition of Evidence or Evidencial

Generally, Evidence³⁰ is anything that you see, experience, read, or are told that causes you to believe that something is true or has really happened. Evidence is the information which is used in a court of law to try to prove something. Evidence is obtained from documents, objects, or witnesses. When we hear the word 'evidence' the first word we can associate with it is the word proven. Hence, the word 'evidence' is derived from a Latin word 'Evidera' which means to discover or ascertain clearly. Some jurists defined evidence as:

According to **Blackstone**, "evidence is mostly anything that demonstrates, enhances transparency and ascertains the truth of facts or issues".

Taylor describes evidence as "all means which confirm or refute any matter in which phenomena and facts are presented to judicial inquiry."

Section 3 of Indian evidence act 1872 clearly defines the word evidence with legal intention - evidence means and includes-

1. All statements which the court permits or requires to be made before it by witnesses in relation to matters of facts under enquiry.
2. Such statements are called oral evidence all documents including electronic records produced for the inspection of the court.

Evidence law is procedural law and supplementary law. This law has retrospective effect. The law of evidence is **Lex Fori**,³¹ that is, the law of the country in which the trial is going on is applicable.

Under this, it is seen that –

- 1) whether there is a witness or not,

³⁰ Indian evidence act 1872, universal law publishers Allahabad 2009 page 2, Indian Evidencial law, Adhoc law series, Kamal prakashan Agra, 2013, page 2-3

³¹ Vidhik bhasha ki ruprekha - outlines of legal language - Central law publication Allahabad 2009 - Dr. Aniruddh Prasad - page 440

2) whether a matter is necessary to be proved or not.

Although the Indian Evidence Act Procedure is the law but it includes the rules of the original law, such as the rules related to the relevance of facts till section 6-55, the rules of prohibition till section 115-117, all these are the rules of the original law.

'lex fori' -This is related to the law of work place. Since evidence is always governed by the law of the country where the proceedings have taken place, the Indian Evidence Act in the leading case of "*Niharendra Dutt Mazumdar v. Emperor*" has held that, "When any question arises as to an event which comes before a Court in India as to the proper method of proving that the incident took place in England, the law of Indian evidence and not the English law of evidence would apply."

ii. History of present Evidencial law

Before the advent of Islam, in ancient India, whether it was a state ruled by Buddhism or a state ruled by Jainism or even a state ruled by Vedic religion, in all of these, the rule of Dharmashastra was used by the courts as evidence Law, because it It was believed that Buddhism and Jainism were only spiritual guides, juridically the followers of these religions, the kings also used Smritis and Dharma Shastras in their own place.

After the advent of Islam, the territories ruled by Islamic rulers continued to have judicial work through Sharia Law, in which the instructions given in the Quran acted as evidence law. Whether Dharmashastriya law or Sharia law, both were such legal ways in which ordinary people or administrators could not make any changes even if they wanted to, because both these laws were related to religion.it's a common belief.But according to some scholars, in the Dharmashastriya law, a learned person who is a knower of the scriptures could make changes according to his own.Examples of this are seen in ³²*Dayabhaga* which is the work of *Vijnaneshwar* and *Mitakshara* which is the work of *Jimutvahana*, in which both these scholars have presented the provisions of Smriti by changing them a little according to themselves.But still there was complexity and rigidity in them.

³² Daya-Bhaga and Mitaksara: Two Treatises on the Hindu Law of Inheritance -Cambridge University Press- H.T.colbroke -2013 (First Published in 1810)

At present, the Evidence law prevalent in India was created as an act made during the rule of the British Government, which is still in force, from time to time many amendments were made in it and even today it is prevalent with minor changes.

In British India³³, the administrative courts followed the English standards of the law of evidence, modeled by Royal Charters created in Bombay, Madras and Calcutta. In the mufassil courts, outside the administration towns, there were no clear standards identifying them with the law of evidence. The courts have delighted in free liberty in the matter of corroboration of evidence. Without any positive principles regarding the law of evidence, the whole organization of equity in the mufassil courts was in a scramble.

There was an urgent need for codification of the principles of law. In 1835, a major attempt was made to codify the principles of evidence by passing the Act, 1835. Somewhere in the range of 1835 and 1853 about eleven Acts were passed administering the law of evidence. However, each of these acts was found to be insufficient.

In the year 1868, a commission was constituted under the chairmanship of Sir Henry Maine. He presented a draft, which was later found to be unacceptable for Indian conditions. Later in the year 1870, this task of codifying the standards of the law of evidence fell to Sir James Fitz, James Stephen. Stephen presented his draft and it was referred to the Select Council as well as persons from the High Courts and the Bar to conclude, and in the spirit of the social occasion, the draft was placed before the Governing Body And it was installed. Finally, the "Evidence Act" came into force on 1 September 1872.

2.2. Evidential law in Dharmashastras

A. Judiciary

In ancient times the court was called "Dharmasthiya"³⁴ (Arthashastra.1/9/6) and "Parishada" Or "³⁵Nyaya Parishada" (Manusmriti 12/110&ParasharSmriti.8/35) and the judges were called

³³ Indian legal history-Rachna law books-Pioneer printers Agra, 2019 , page -10

³⁴ Kautiliya Arthashastra - Dr.Ramkumar Verma Shastri -Dynamic Publication Meerut U.P. 2nd Edition 2010, Page 64

³⁵ Ashadasha smriti sangraha - Parashar smriti - Khemraj Shrikrishnadas Publication Mumbai,

"Dharmastha"(Arthashastra 3/1/1)or "Sabhasada"(Narada3/5)

According to Dharmashastra, these eight parts of Judiciary are considered (Narada .1/15) -

³⁶Raja satpurush: sabhya: Shastram Ganak lekhakau Hiranyamagnirudakam Ashtanga: samudahrta://

1. The King (court accrediting body)
2. The Judges & Jury
3. Dharmashastras (Code of Law)
4. Ganakalekhaka (The writer or record holder accounting officer)
5. Prangvivaka (Advocates)
6. Hiranya (Court fees)
7. Evidences
8. Fire & water (To swear an oath so that a person will not lie)

These three main components are considered necessary in the judgement -

³⁷Dharm Shastram puraskriya Prangvivaka Mate Sthita / Samahita Mati Pashyed vyavhara nanukramad //(Narada .1/35)

1. Rules based on Dharmshastra or Nyaay Shastra
2. Opinions based on Dharmshastra of jurists, judges and lawyers
3. Keeping one's mind calm, the truth obtained on the basis of answers and evidence asked from the plaintiff and defendant.

According to Dharmashastra, judges should mainly have these qualifications -

1. According to Parashara -

³⁸Chaturvedo - Vikalpi ch Angavidharma -Pathaka:

Trayashcha-Ashramino - Mukhya: Parshdeva Dashavara//

Ragyashchanumate sthitva Prayashchitam vinirdishet

2018Edition 1, Page 310, Manusmriti - Pandit Girija Prasad Dwivedi-Nawal Kishore press Lucknow1917, edition -1st, preface Page459- 460

³⁶ Narada-smriti - Dr. Ramkumar Verma Shastri - Dynamic Publication Meerut U.P. ,2005 2nd edition, Page 21

³⁷ Narada-smriti - Dr. Ramkumar Verma Shastri - Dynamic Publication Meerut U.P. ,2005 2nd edition, Page 27

³⁸ Ashadasha smriti sangraha - Parashar smriti - Khemraj Shrikrishnadas Publication Mumbai, 2018Edition 1, Page 310

Swayameva na Kartavyam Kartavya swalpa nishkriti://(8/35,36)

These main qualities of the Judicial Council are essential-

1. One who is knowledgeable about all the four Vedas including all their parts.
2. Know all the Dharmashastras along with their parts.
3. The person with Grihasth Ashram should be the main one among all the three Ashrams (Sanyasi Vanaprasthiti and Brahmachari have no right to give judgement)
4. One who embodies the 10 characteristics of Dharma.
5. He has been appointed for judicial work by the king and the administration and not as per his wish. which has been thoroughly tested by the king and the administration

Only a person with these traits is eligible to administer justice as a Parishada.

According to Rishi Parashar, the Judicial Council is formed only when there are at least three and maximum five such scholars. (8/17-22)

Parashar certainly gives preference to Brahmins as a council in justice work, but he is strongly against a person being a Brahmin only on the basis of caste and being appointed for justice work, rather only a person with full qualification should be appointed for justice work. (8/23-28)

2. According to Narada-

³⁹Dharm shastrarth kushala kulina satyavadina:

Sama Shatru cha mitre cha nripate syu sabhasada://(3 / 5)

1. One who is well versed in Dharmashastras and Vedas.
2. Be from a noble & elite family.
3. Truthful and of good character.
4. Be a person who treats both enemies and friends equally.
5. Thoroughly tested by the king and experts.
6. Be a person appointed by the king

Only a person with these qualities and traits is known as a Nyayik sabhasada. Rishi Narada gives preference to nobility and merit rather than any caste or varna for the qualification of a Nyayik sabhasada

³⁹ Narada-smriti - Dr. Ramkumar Verma Shastri - Dynamic Publication Meerut U.P. ,2005 2nd edition Page No.53

According to ⁴⁰Kautiliya To become a Dharmastha (a judge) it is necessary to have 27 main qualities-
*Janpadobhijata: swavagraha: Kritashilpashchakshushman pragyo dharyishnurdaksho vagmi
pragalbh: Pratipattimanutsaha prabhavyukt: Kleshsaha: shuchirmaitro dridhbhakti:
sheelbalarogyasatvsanyukta: stambhchapalyavarjit: sampriyo vairanamkartyetyamatyasampata
at: Padardhagunahinaiu madhyamavarau*/(Arthashastra.1/8/1)

1. He must be a citizen of the country.
2. He should be free from vices like gambling, drinking etc.
3. He should be expert in horse riding etc.
4. He should be well versed in arts and sciences.
5. He should be an in-depth study of dharmshastra (jurisprudence and political science).
6. must have a sharp memory
7. Must be clever who can recognize the mistake and cunningness of others.
8. He should be eloquent - know the art of speaking.
9. Pragalbh means Must be able to exert pressure on others
10. Must be successful in debate, must be skilled
11. must be full of enthusiasm
12. he must be tolerant
13. That mind must be pure from words.
14. should be friendly.
15. he must be a patriot
16. Must be polite and good natured.
17. Healthy
18. he must be patient.
19. must be without pride & ego.
20. stable in nature.
21. Good & Attractive Personality.
22. There should be equal treatment for enemies and friends alike.
23. Must be proficient in the art of writing.
24. not be accused in any case.

⁴⁰ Kautiliya Arthashastra - Dr.Ramkumar Verma Shastri -Dynamic Publication Meerut U.P. 2nd Edition2010, Page - 57,58,64

25. Grihasth
26. man who cares about his own business.
27. believer in the justice system of the state.

These 27 qualities mentioned by Acharya Kautilya for a judge are basically the qualities mentioned by Maharishi Manu which a Dharmastha should have.

⁴¹Tatra Dharmopadhashuddhan Dharmasthiya Kantaka shodhaneshu sthapayet (Arthashastra.1/9/6)

After examining the king, a person with these qualities should be appointed as a judge in civil and criminal courts.

According to Manu -

Maharishi Manu mentions a detailed qualification for a judge in Manusmriti. Detailed and specific mention of what qualifications the members sitting in the jury should have is found in Manusmriti.

Maharishi Manu considers the need for a maximum of 10 and a minimum of three members in the Judicial Council. Which should mainly have these eight qualities (chapter 12 verses 105-117,7/141)

1. The judge should be from a pious and Elite family.
2. Must know Dharmshastra, Vedas and political science.
3. must be fearless.
4. Must be of good character, serious and performing Agnihotra.
5. Must be logical and stable with intelligence and sharp memory.
6. He should be very attentive and constantly studying.
7. Must possess 10 characteristics of Dharma.
8. He should be healthy in body and mind.

B. Dharmashastriyā Evidence law

The Dharmashastras originate from the Vedas, which are said to be the words of God and the apaurusheyai (that which is not the work of man).

⁴¹ Manusmriti - Pandit Girija Prasad Dwivedi-Nawal Kishore press Lucknow 1917, edition -1st, Pages -459-462

Smritis were created by the sages on the basis of the practical knowledge gained by experiencing the knowledge obtained from the Vedas. Many Smriti-Karas have said⁴² that where there is a contradiction between the Dharmashastras and the Vedas, then the decision of the Vedas is considered supreme. (vyasa smriti 1/4)

Dharmashastra is not a book, never was, it was a vast system of conduct and law. Which was compiled by sage Manu in ancient times and those natural rules and regulations were given the form of a code of law. After Manu, this compiled code again got scattered as different sages tried to compile it in different forms as per their own but they could not succeed completely. Similarly, we can say that the form of *Manav-Dharmshastra* that we see today is only 10% and that too due to projection. No Smriti text is complete in itself, nor is there any complete system in them. All Smriti texts contain small systems within themselves and maximum adulteration can be seen in them too.

If a person supports or opposes any one Smriti text considering it to be a complete system, then he will be called an ignorant person who has neither studied in depth nor has he been able to understand the system of Dharmashastra.

Despite being scattered and endangered, the Dharmashastra or Smriti texts definitely reflect the Indian ancient legal system like a mirror and the most beautiful presentation of it is the evidence law which was many times more advanced and developed than other ancient civilizations existing at that time.

The first mention of proof method or law of Evidence is found in the Vedas. Many words like "Sakshya", "Pramana" have been used in the day.

Four types of evidence are mentioned in the Vedas-

1. Smriti,
2. Aitihya
3. Pratyaksh
4. Anumana

⁴² Ashadasha smriti sangraha - vyasa smriti - Khemraj Shrikrishnadas Publication Mumbai, 2018 Edition 1, Page 344

Dharmashastra mentions three types of evidence-

1. Pratyaksh
2. Shabd
3. Anumana

These three evidences are expressed differently in different memories.

According to Smriti Karas, in his Smriti Shastra, the evidence has been classified and arranged under the evidence law -

⁴³Pramanam likhitam Bhuvina: sakshinashcheti Kirtitam I/(yajnavalkya. Vyavharadhyay-2)

Tasya ch Bhava va shchitro Bhavanti likhitam Sakshina: Samayakriya ch I/(Vishnu. 5/12)

Likhatam Sakshino Bhukti Pramanam Trividham Smritam.(Narada.4/69, vashishth.16/2)

According to the above quote, all Dharmashastras explains only three forms of evidence.

I. written, II. Oral, III. Possession

Some scholars believe that written evidence was not available in ancient India, it started in the first century BC because before that Indians did not know how to write. But because the religious writers like Narada, Manu, Kautilya etc. many times mention written evidence in their writings which Western scholars consider to have been added later or are interpolated. But this is absolutely false, because the knowledge of script art was in India for thousands of years, which is mentioned in Rigveda, Yajurveda and Atharvaveda and many Upanishads mention script art. Script art and names of various scripts are also mentioned in detail in Buddhist ancient texts.

Here we give examples of the mention of script art (lipi -kala or art of writing) in these ancient texts-

1. ***Rigveda*** - "⁴⁴***Aa rikh Kikira krinu paninam hridaya kave***"(6/53/7), "***Tatha samasya hridayama rikh Kikira krinu***" (6/53/8)It means write kindness in your heart. Learn to write the alphabet like- A B C(क ख ग etc)while keeping it in your heart.

⁴³ Yajnavalkya smriti - Pandit Girija Prasad Dwivedi-Nawal Kishore press Lucknow2015, edition -14 nth page 85,
Narada-smriti - Dr. Ramkumar Verma Shastri - Dynamic Publication Meerut U.P. ,2005 2nd edition
Page 80, Ashadasha smriti sangraha - Vashishtha Smriti- Khemraj Shrikrishnadas Publication Mumbai,2018Edition
1,Page 578

⁴⁴ Rigveda -Part-2 , Acharya Vedant tirth bhashya- Manoj Publication Delhi, Pages518

2. *Atharva veda* - ⁴⁵"*ajasham twa sanlikhita majaishamut sanrudham*" (7/50/5) it means write systematically or "*likhitamarpanen tena ma susrobrahmanapi tadvapami*" (12/3/22) it means art of writing is a gift by God to humans. "*K Aisha Karkari likhat*"(20/132/8) who is writing these alphabets like Ka kha ga.
3. *Yajurveda* - ⁴⁶"*Dhyam ma lekhirantariksha*"(5/43) The space beyond the sky is like a writer. In Yajurveda, there is also mention of mantras having a certain number of letters for different deities.⁽⁴⁷⁾9/31-34) Many questions and answers are found in both Rigveda and Yajurveda. One such quiz is found in Yajurveda in which the question is asked how many letters are there in this script and the answer is that there are 100 letters in this script. From which we come to know that a script with 100 alphabets letters was prevalent in the Vedic period⁴⁸. *Katyaksharani*?(23/57) ,*Shatamaksharani*(23/58)
4. *Shatapatha Brahmana* - it is the oldest Brahman text⁴⁹ Not only talks about the art of writing but also discusses a systematic writing process - *ayainam Parilikhit , Parilikhit sarvat, Para Para varyyasi lekha Bhavanti lekha hi pur*:(6/3/3/23-26)
5. *Mahopanishada* - This is one of the oldest eight Upanishads and the great statement named "*Vasudhaiva Kutumbakam*" is taken from this Upanishad, it mentions Lipi Karma (writing work) ⁵⁰*Bhavayanmanasa Vishnum lipikarmarpitopama*:(3/57) This means that the work of writing should be done wholeheartedly and should be dedicated to Lord Vishnu.
6. Apart from the Vedic texts, not only the mention of script art is found in many Buddhist and Jain ancient texts but also the names of many types of scripts are found. For example, in the book named Lalit Vistar, *Lord Buddha(Siddharth)* is taught the art of script or the art of writing by his guru in his childhood, in which he acquires the knowledge of 64 types of different scripts -⁵¹ *Brahmi Kharoshthi pushkarsari anglipi vangalipi magadhalipi aasam bho upadhyay chatushashtayi lipinam katamam tvam shishyapayishyasi (Lalit vistara 10/3)*

⁴⁵ Atharva Veda - Manoj Publication Delhi 2011 -Aacharya Vedant tirth bhashyam , page Part-1 391-392, Part -2 Pages 114,538

⁴⁶ Yajurveda - Manoj Publication Delhi- Aacharya Vedant tirth bhashyam- 2011 pages 76

⁴⁷ Yajurveda - Manoj Publication Delhi- Aacharya Vedant tirth bhashyam- 2011 pages 124-127

⁴⁸ Yajurveda - Manoj Publication Delhi- Aacharya Vedant tirth bhashyam- 2011 pages 354

⁴⁹ Shatpath Brahman bhashyam-madhyandiniya shakha Shukla yajurvediya -Dr .Albert Weiber , Pt. Ganga Prasad Upadhyay and Swami Satya Prakash Saraswati- Vijay Kumar Govindram hasanand Arya sahitya bhavan nai Delhi 2010 Pages 176-178

⁵⁰ Upanishad sangrah- Mahopanishada -Pt. Jagdish Shastri Jha- Motilal Banarasi Das press Delhi 2011, Page age 243

⁵¹ Lalit vistara- Sanganakikritam Baudhdhasanskrit tripitakam, Uttar Pradesh Hindi Sansthan Lucknow 1998 page 28

Similarly, there is a very good mention of script in the Buddhist *Tripitakas* and we also get the names of many scripts. In the Jain texts, like - The *Bhagwati Sutra*, *Samta Sutra* and *Pannavana* also show the acquisition of knowledge of script art by various *Tirthankaras*. From the above example, we clearly know that even about 2500 to 3000 years ago, every state in India had its own distinct major script and all the accounting of the state was done with the help of this major writing art.

The mention of **64 different types of scripts** at the time of *Buddha* itself shows how developed and widely practiced the art of writing was in India, hence all the texts from Vedas to Upanishads and Puranas were written and along with writing, they were also memorized. Due to the history, a big deception is done to the present day students that they are taught in the history that the development of script in India happened much later or started from the Maurya period, which is completely condemnable and wrong. All the ancient texts and other physical evidences found so far in India prove the existence of ancient art of writing in India.

Acharya Kautilya, in his ⁵²*Arthashastra*, has not only mentioned in detail about the state work being done through written documents, having a written record of every work done in every department, etc(1/18/2,2/7/1-16). through writing, but has also given rules for it in the form of systematic legislation. When Acharya Kautilya gives instructions to start studying Vidya in Upanayana Sanskar, one of the 16 Sanskars in Arthashastra, he gives instructions to worship with lekhini (pen) and calls it the first step to start writing. (Arthashastra.1/4/4)etc.

2.3. Evidential law in Narada Smriti

The Evidence law that we see discussed in Narada Smriti expresses rules containing more factual and logical reasons than other Smriti texts. Every rule and provision in Narada Smriti is supported by facts, logic and evidence. Most of which were useful not only at that time but are still useful today.

The nature of the provisions related to the evidence law given in Narad Smriti is similar to many ancient laws, but we can clearly see the glimpse of modern evidence law in it. We also see the change in the provisions of Narad Smriti, the courage to accept the innovation and abandon the conservative

⁵² Kautiliya Arthashastra - Dr.Ramkumar Verma Shastri -Dynamic Publication Meerut U.P. 2nd Edition2010, Page 43,114,162-169

and improgressive thinking -

⁵³Likhitasyaad Bahuchhidram Sakshino Nazramara.Bhuktistvnarth Asishkha Santairvarthsadhaki/(Narad.4/73)

It means there can be two many faults in written evidence and the witnesses giving the statement is not immortal as well as the possession of the property does not always belong to anyone today the properties with someone else tomorrow the property is with someone else that is why weather it is a witness evidence for possession if it present then it is useful otherwise not.

In this way, if we see, the nature of Narad Smriti is progressive and experimental, In which evidence is admissible based on argumentative facts with certain rules for which a certain precise procedure is ensured in court.

2.4. Defination & elements of Evidence in Narada Smriti

According to Narada, the judicial process mainly has these 4 basic elements.

1. honest and decent witness or evidence,
2. Code of law,
3. point of contention or dispute,
4. order of the sovereign or judge (⁵⁴Narada Smriti -1.8)According to Narada, every judicial proceeding has eight basic angas (organs)
 - i. A king or judge with the right conduct.
 - ii. Members of tribunal or jury.
 - iii. Code of Justice or penal code
 - iv. Accounting Officer or typist.
 - v. Prangvivaka (Advocate)
 - vi. Court fees
 - vii. Agni or jala (Fire & water) means witness or evidence)
 - viii. Dharma (Law), local law and state law
 - ix. According to Narada

⁵³ Narad Smriti -Dynamic publication meerut -Ramkumar Shastri,2003 Page 82

⁵⁴ Narad Smriti -Dynamic publication meerut -Ramkumar Shastri, 2003page 21,25,27,36

there are four types of evidence-

1. written, 2. Oral ,3. Possession,4. Divine

The king and the judge should examine the behavior of the plaintiff and the defendant according to this procedure, using these types of Evidences -

1. According to Code of Conduct and Code of Law given rules regulations and legislation.
2. According to the opinion presented by the legislators, jurists and lawyers on the basis of code of law.
3. On the basis of the answers obtained from the questions put to the plaintiff and the defendants keeping their intelligence.anything, statement or written thing and a statement made on oath which confirms a fact and satisfies the court and which is not fraudulently produced is considered evidence.(Narada- 1/62-66)

According to Narad, these some qualities should be there in an evidence, only then it is acceptable by the court.

1. Written evidence should be pure, clear and genuine and should not be forged or fraudulent.
2. The presentation of evidence before the court is either by the original parties or by their representative or advocate appointed by them.
3. Possession and divine evidence admissible in the absence of written and oral evidence.
4. Evidence must be contemporary and not very old.
5. The person giving oral evidence or testimony must be a properly examined person. etc

3.1. Kinds of evidence in Narada Smriti

Likhitam Sakshino Bhukti Pramanam Trividham Smritam..(4/80)

According to this shloka, Narada clearly states three types of evidence

I. written, II.Oral ,III. Possession

Apart from the above 3 types, another type of evidence is also seen elsewhere in Narad Smriti which we can call divine evidence.

Here if we see them with explanation in common language –

I. Written evidence

Narada mainly describes four types of written evidence-

- A. self written document.
- B. any document written by another
- C. Document attested by witness
- D. Document without witness

Written evidence is any written thing or document which, when produced in a court of law, proves a fact. (Narada.4/135)

Narada has said that a written document having these five qualities is admissible in the court of law as evidence (Narada.4/136) -

- A. written in plain language and whose language is clearly understood.
- B. not written using double meaning words.
- C. A document, Set of facts in the order of their importance
- D. In which the necessary things like date, number, quantity, duration, conditions etc. are mentioned
- E. admissible under local law and a document acceptable under local law

The documentary or written evidence given by these people is not admissible in the court of law (Narada.4/137)-

1. Matta - Drunked, alcoholic person
2. Abhiyukta - person convicted or accused by court
3. Stri - A women, (Due to lack of education and dependence)
4. Balaka - A child because A minor person does not have the right knowledge of right and wrong.
5. Vivhala - person without free consent, The person who is under the control of greed, fear and deceit.

II. Oral Evidence

According to Narada a person is witness -

(4/148)

***Samakshadarshanatsakshi vijyeya shrotrachakshusho,
Shrotrasya yat paro bruto chakshushoredarshanam swayam//***

Means a person who sees an event with his own eyes Or the person who hears with the ears is called a witness (sakshi). The statement of such direct hearer and seer is accepted as evidence. One who has heard,

who has seen and experienced and who was present at the time of the incident is fit to give oral evidence.

Therefore, only such persons are considered eligible to give oral evidence. These persons should also have some of the following characteristics -

1. He should be bold or fearless.
2. His mental condition should be healthy.
3. The statement given by him should be given freely and should not be induced by any pressure, fear, greed etc.
4. The witness making the statement should not be a relative of either of the parties mainly and should not have any kind of greed or fear relationship with both of them.
5. The witness should not be the accused before the law.
6. The testimony of that person will be accepted mainly to verify the character of the witness, two eminent people of the society should verify before the court that this person never tells a lie.

III. Possession

Not only Narada Smriti in the evidence related to any land dispute legally, but also in the present time the possession is considered a huge evidence. Even today we see an important role of possession evidence in revenue related disputes in tehsils. Under the ⁵⁵Limitation Act, 1963, the limitation period on private property is 12 years, while on public land, the limitation period is 30 years. Narada clearly says regarding ownership of property by possession -

1. The person who has written and oral evidence in his favor but his property is in possession of someone else or someone else is using his property, the person who has the above evidence is not the owner even though he is the owner of the property (Narada.4/77-78)
2. The person who allows someone else to enjoy his property continuously for 10 years, and no one opposes, then that person loses his ownership over that property and the person who is

⁵⁵ Limitation Act 1963 pdf, 2022 Part-5, section 64-67

enjoying or possessing it is considered the owner of that property, and its ownership ceases to be the ownership of the person consuming or possessing it (Narada.4/79).

3. Ordinarily a person who is not the owner of the property but is enjoying and holding it is not considered to be the owner of that property unless that person has been in possession of that property for about 20 years (Narada.4/82)
4. If the person who is the owner of the property is of sound mind and is a full adult, yet someone else is enjoying his property and has been occupied by someone else and the original owner is not opposing it, then the person in possession is the real owner of that property. will be considered (Narada.4/80) Except property money and king's property.
5. If a person has been using and occupying a property for three generations, then that person becomes the original owner of that property, whether or not the owner of that property is another (Narada.4/89)
6. In these 6 situations, a person cannot be the owner of that property even after being in possession and consuming it-
 - A. Stridhan property,
 - B. Mortgage,
 - C. any property has been deposited in trust,
 - D. property of a person of adult and unsound mind, F. property of a person imprisoned by the state, G. deposit & Government Property (Narada.4/81) Thus we can say that possession as an evidence is an important evidence in respect of revenue disputes.

IV. Divine Evidence

Not only in India but also in the ancient civilizations of other parts of the world, it has been considered an important evidence by which people used to decide justice and injustice by ascertaining the truth and falsehood. We can see examples of this type of evidence in ancient history, like Sita ji's Agnipariksha in Ramayana. In general, even today, we consider taking an oath or saying something under oath as such divine evidence. For this reason Narad mentions fire and water in the main parts of the judicial system (Narad.1/15). Because the divine test of truth and falsehood can be done by the court of the plaintiff and the defendant only by fire and water.

In the current Indian judicial system, till some time ago, similar type of Devi Praman Pariksha has

been held, in which the witness, the plaintiff and the defendant were made to testify by taking oath from their religious books.

3.2. Who is witness According to Narada? Qualifications , Eligibility of witnesses according to Narada

According to Narada a person is witness

***Samakshadarshanatsakshi vijyeya shrotrachakshusho,
Shrotrasya yat paro bruto chakshushoredarshanam swayam***/(4/148)

Means a person who sees an event with his own eyes Or the person who hears with the ears is called a witness (sakshi). The statement of such direct hearer and seer is accepted as evidence. One who has heard, who has seen and experienced and who was present at the time of the incident is fit to give oral evidence.

Qualifications and eligibility of witnesses

According to Dev Rishi Narada, the statements of such persons are accepted as witnesses in the court

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⁵⁶Narthasambandhino napta na sahayaa na vairinah, Na Drishtadosha: Prahrishtvya: Sakshin: Praditushita:/(4/177)

a person who is not a friend, not a business partner, and not an enemy, Should not be a close relative and also should not be a subordinate employee, One who is not known in the society for giving false testimony and telling lies, Any person with whom the plaintiff and the defendant have any relation of profit, greed, fear, jealousy, love or selfishness, that person cannot be a witness. Because the statement or testimony of all these persons is suspicious, which can also be false for these reasons. Mainly Narad has mentioned 91 types of persons who should not be accepted as witnesses in the court and different important reasons for not accepting their testimony have also been given by Narad(4/178-188) But if necessary, witnesses can also be made out of these according to the circumstances.

Describing the identity of false witnesses, Narad has told the courts 4 ways to examine the witnesses

⁵⁶ Narad Smriti -Dynamic publication meerut -Ramkumar Shastri, 2003page 110

All the evidence and quotes taken from Narada Smriti in the above are from Narada Smriti published by Dynamic Publications Meerut u.p. Whose editor is Dr. Ramkumar Verma Shastri

before their statements (4/ 197-228)-

1. The judge should first examine the body language and mental state of the person who has come to testify.
2. Giving different types of mythological and scriptural examples to the witness who has come for testimony by the judge, what is the result of the sin of giving false testimony?
3. The judge should also check the antecedents and social standing of the witnesses. After knowing the character of the witness, the veracity of the statement made by him is also confirmed to an extent.
4. The judge should also test the witnesses through greed and fear.

Narad does not consider these 6 people eligible to be witnesses -

1. A minor or child,
2. A prostitute,
3. King,
4. mentally ill and deranged, unsound mind,
5. Scoundrel Disreputable and thief,
6. Servant

According to Narad such persons are eligible to be witnesses -

1. one who is present at the event, or who has witnessed the event.
2. a person known for his pure character and truthfulness.
3. Who does not have any kind of compulsion relationship with the plaintiff and the defendant like - fear, greed, hate, jealousy, love etc.
4. He should be bold or fearless.
5. A person who is of sound mind and has a reputation in the society, who has never been involved in any accusation and who does not describe too much and talks factually. In this way, if we talk about the main characteristics of the witnesses in Narad Smriti, then it mainly includes having pure behavior, having pure character, being truthful, being respected in the society and being present at the time of the incident, being a clear speaker, being an adult, Having a healthy brain be a person of free consent and not under any coercion or pressure is the main symptoms, Whether it is litigation in criminal matters or in civil matters or in revenue matters, the characteristics of a witness are mainly said to be something like this.

3.3. Advantages & Disadvantages of witness theory of Narada.

If we discuss any advantage of Narada Smriti in present time then we should only note that in present time we have a well organized legislation by which we can create good and useful laws and those laws which are not useful can also cancel them .Yes it is true that even at this time we can take inspiration from the laws from ancient smritis of India and by that inspiration we can make changes in current Hindu law or other law .It may be surprising to some people, but even today we are continuously improving the present law by taking something or the other from the ancient Roman law. There are many misconceptions and discrimination about Smriti, but we see this discrimination in most of the ancient laws.

In relation to the witness & evidence law we still consider the British law which was made and implemented in 1872, in which many improvements & Amendments have taken place so far and will continue to happen in the future, but it is still applicable today.

The Britishers made the current evidence law according to the environment of India and long before the tie of creation of this law, the British scholars had done a deep study of Narad Smriti, as a result of which many rules from Narad Smriti have been adopted in the current evidence law as well taken.

In the current evidence law the witnesses are not tested to the extent that is mentioned in Narada Smriti and this is the reason that today the prevalence of false testimony and false witnesses has *increased a lot, although Indian law makers and researchers are continuously coming up with new ideas in this subject. researching and improving. Except some of the rules related to the examination of witnesses under Narad Smriti, the maximum rules are very useful even at present, for which these three rules are very important -*

- 1. Witnesses should be tested psychologically because today psychology has become very advanced and from that we can get information about truth or falsehood only through the gestures of the person, although this suggestion is also very old.*
- 2. What is the social status of the witness person and whether he is a criminal, has been convicted before and whether the testimony given by him will be true, information about this should also be ascertained from his previous record.*

3. *It should also be known whether he has any such relationship with either of the two parties that would commit him to give false testimony, because due to greed, fear, greed and enmity, people get ready to give false testimony as well.*

Many people will have different views on this subject, but one should think about it with a calm mind and come to the conclusion only by studying Narada Smriti parallel to the present law.

If we talk about the disadvantages of witness theory of Narad Smriti, then only two main disadvantages are seen -

1. It is well known about the Smritis that they are Dharmashastras and no one can make any kind of change in Dharmashastras, they are immutable, Therefore, we cannot change the things which are useless in the present time in the Dharmashastras, but at present our legal system is based on the above act, which we can change as per the need and make new Acts and also repeal the old Acts can do.
2. It is true that the provisions of evidence law given under Narada Smriti are very high quality and developed provisions, But in the present situation, there are many such reasons on whose criterion the provisions of Narad Smriti do not fit completely. like -
 - A. **At** present we have independent legislation By which we can make rules as per requirement and can also repeal them.
 - B. **In** modern times, the technological development has become very high, according to which the law should also be equally developed. Because with the development of technology, the developed form of crime and criminal activities also comes to the fore. There is a difference of more than 2400 years between Narad Smriti and the present time.
 - C. **Today** we have hundreds of developed principles of law, according to which we get a well-organized law, while at the time of Narada Smriti, jurisprudence was not so developed Briefly, from the above, we see what are the advantages and disadvantages of the theory of evidence law of Narad Smriti, this article of ours remained in limited word limit, so it is not being discussed in detail here.

Conclusion

In this way we see that Narad Smriti is a perfect example of ancient Indian Evidencial law & Civil laws whose period estimation goes above about 2400 years and foreign scholars have very good opinion about it. Where ancient Roman jurisprudence is considered to be the best developed jurisprudence in the whole world and there is an inferiority complex about Smrities. The Narada Smriti in the form of the same ancient Indian Dharmashastra, which is considered to be more ancient than the ancient Roman law, is a compilation of higher legal principles.

Through this article, I have tried to keep and present that form of ancient Indian *Manav-DharmaShastra* to the people, which foreign scholars greatly appreciated and took as their inspiration, but on the other hand, Indian scholars Set aside. But we should recognize our pride and try to understand our Dharmashastras not as religious scriptures but as social books which were created by man for the orderliness of human society.

As a summary of Narad Smriti we can see these two verses of it-

57 धर्म एव हतो हन्ति धर्मो रक्षति रक्षि ताः ।

यत्र धर्मो ह्यधर्मेण सत्यं यत्रानृतं ने च ॥

हन्यते प्रेक्षमाणानां हतास्तत्र सभासदः ॥ (Narada.3/8 Manu. 8/14,15)

Dharma eva hato hanti dharmo rakshati rakshita.

Yatra Dharmao Hyadharmen Satyam Yatra Nritten Ch Hanyate Prakshamananaan Hatastra sabhasada

Wherever by any behavior justice is killed by injustice, truth is tortured at the hands of untruth, all the judicial

officers, councilors of that place are condemned and stigmatized in the public.

Na sabha yatra na santi vriddhaah, vriddha na te na vadanti dharmam,

Naasau dharmao yatra na satyamasti, na tatsatyaam yachchhalenanuviddham ॥ (Narada.3/18)

That council & jury is not a council & jury in which there are no people big in knowledge and age and experience, Those who do not talk about justice cannot be great in knowledge and experience, And

⁵⁷ Narad Smriti -Dynamic publication meerut 2003-Ramkumar Shastri, page 54,59,

that justice is not justice that does not have truth, And that truth is not truth which is not free from deceit.

major reason for this is the changes that have been taking place in Indian civilization for thousands of years, the arrival of different cultures, the rise and fall of different empires. During which lack of proper maintenance of these huge texts is also a big reason. But this does not mean at all that ancient Indian Dharmashastras has been completely lost and destroyed. Rather, their original form has survived to a great extent even today, which can guide us in the present and future. In the language of example, it is like an old warrior who cannot fight himself but can make the present young warriors and future warriors victorious by guiding them. Similarly, Dharmashastra is also not in practice and prevalent today but even today the courts take a lot of inspiration from it regarding Hindu law. Where concepts like untouchability and casteism and many rules related to them are seen, due to which there is a lot of opposition to the Dharmashastras, but it is just an example of the harsh social system of ancient times which was not only in Indian civilization but also in Egypt, Rome, Greece even America, Britain. This does not mean that we should completely ignore the Dharmashastras, they are living examples of our ancient legal system of which we should be proud. Some things may be wrong in these, but the systems given in them were more advanced and developed thousands of years ago than other world civilizations of that time, which are inspirational even today.

In *Manava Dharmashastras*, we find a clear and systematic mention of the judicial process, which is very advanced and modern. There is no mention of keeping records of written documents in the judicial process as ancient as in the Dharmashastras, anywhere else in the world. We can say this much in brief about the judicial process and the concept of the Evidence law as stated in the *Dharma Shastra*-

1. It was very well organized, clear and fair.
2. This was the world's first known authentic judicial process in which written records were kept.
3. The judicial bench of Dharmashastra was systematically divided, with specific officers for each process.
4. The Evidence law was interfered with by religious practices and morality. The only reason for which was that the person should not commit crimes due to supernatural punishment and should become pure by accepting the crimes committed and suffering the punishment. The

Judiciary and the Judicial Council or law of Evidence as described in Manava Dharmashastras were a systematic mixture of divine and cosmic justice and human justice.

If we comparatively study the present Evidence law with the ancient Indian Dharmashastriya law, we will come to the conclusion that the present Evidence law may have been implemented during the British Rule even though it is stipulated by the Acts But 60 to 70% of the rules and regulations given under it are inspired by Indian Dharmashastra law.

This is a very broad topic and if we write something on it after research, then our article will become very long, therefore, we cannot write too much on this topic due to the fear of increasing the word limit of the article, but in the future, we will definitely shed light on this topic in detail in other writings. In summary, we can say that the Law of Evidence expressed in Dharmashastra has been a developed and modern law far ahead of its time, it is also an inspiration for the present Law of Evidence.



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