An analytical study on jurisprudence: Ancient and modern perspective

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Jurisprudence is the philosophical study and systematic inquiry into the nature, principles, source, and interpretation of law. It encompasses the examination of legal concepts, theories, and the philosophical foundations upon which legal systems are built. Jurisprudence seeks to understand the essence of law, its purpose, and its relationship with justice and morality. It is an important field of study for legal scholars, philosophers, and practitioners as it helps in the critical analysis and development of legal systems and principles.

Meaning of jurisprudence: The term "jurisprudence" has been given many definitions by various authors. The term derives from the Roman term "*Jurisprudentia*", which itself is composed of the two terms "Juris" (which means law) and "*Prudentia*" (which means knowledge). In plain English, it may be argued that 'Jurisprudence' is the term used to refer to a certain form of study into the law, an investigation of an abstract, general, and theoretical nature, which attempts to identify the fundamental principles of law and legal systems. Hence, it deals with legal knowledge rather than 'the law'. Examining the legal system and coming up with sound arguments are the duties of jurisprudence. Jurisprudence is known as 'La Philosophie De Droit' in France, which means "The Philosophy of Rights," or 'Law' in its most general sense. In Germany, the term '*Rechtsphilosphic*' refers to the philosophy of rights,

which is a form of law. India may well use the word *Vidhi Śāstra*, which refers to the study of law in its broadest sense. In jurisprudence, fundamental legal precepts are studied. It may be philosophical, scientific, or historical, among other things. Legal foundations are necessary for civil, criminal, constitutional, administrative, and military laws. All that is based on wisdom is profound and long-lasting; all that is based on fairness will enjoy enduring respect; all that speaks the truth will overcome all challenges. However, what exclusively benefits a single class or segment of the population will ultimately lead to unrest, hostility, and a lack of peace. Likewise, unfair legislation is a defective law that will not be followed, even if required.

Definitions of jurisprudence:

Some of the definitions of the term "Jurisprudence" given by various eminent Jurists as under-

Jurisprudence is defined etymologically as "knowledge of law". According to Patterson, 'jurisprudence' refers to a body of organised knowledge addressing a specific legislation type. 'Jurisprudence', in Jullius Stone's definition, is the extraversion of a lawyer. It is the lawyer's assessment of legal principles, theories, and methods in the context of current knowledge in fields unrelated to law. According to Kelson, the study of 'jurisprudence' is the study of a hierarchy of norms, with each norm's applicability reliant on that of a higher standard, the 'Grund Norm.' (To him, 'norm' refers to a code of behaviour. Grund norm refers to the higher standard. Lawellyn defines 'jurisprudence' as the empirical study of incidents and variables that affect judges. Keeton defines jurisprudence as the systematic organization and study of general legal ideas. The great Roman jurist, Ulpian defined 'jurisprudence' as the observation of things human and divine, the understanding of the right and unjust. (Ulpian, a renowned Roman jurist, described 'jurisprudence' as the observation of both human and divine things and the comprehension of what is just and unjust.) The concept is excessively wide and might very well apply to philosophy, ethics, or even religion. Roscoe Pound defines 'Jurisprudence' as the 'science of law, testing the terminology law in the juridical sense as denoting the body of tribunals recognized or enforced by public and regular rules in the administration of justice' 'Jurisprudence,' according to Salmond, is the "Science of the first principles of the civil law." Hence, jurisprudence focuses on a certain type of law, namely civil law or state law. This type of law consists of guidelines that courts use to administer justice. It has distinctive qualities that set it apart from all other types of law. Jurisprudence is referred to as the "philosophy of positive laws" by Austin. The legislation enacted by a political superior to regulate the

behavior of individuals who are under his power is referred to as positive law or positivism. As a result, Austin's use of "positive law" and "civil law" are interchangeable. Austin uses the somewhat depressing term "philosophy" to define jurisprudence. Jurisprudence is described as the "formal science of positive law" by Sir Thomas Erskine Holland. A formal science, as opposed to material science, deals with the underlying concepts rather than the specifics that underlie them. According to this theory, jurisprudence should focus on the overall body of legal doctrine. It should cover the fundamental ideas and guiding concepts that form the framework for every developed legal system. **(1)**

Studying jurisprudence is significant for several reasons:

1. **Understanding the Nature of Law**: Jurisprudence allows individuals to delve into the fundamental nature of law itself. It helps answer questions like "What is law?" and "Why do we have laws?" This understanding is crucial for anyone involved in the legal field, from lawyers and judges to policymakers.

2. **Interpretation and Application of Law**: Jurisprudence provides the tools for interpreting and applying laws effectively. By examining different theories and approaches to legal interpretation, scholars and practitioners can make more informed decisions about how laws should be understood and applied in specific cases.

3. **Shaping Legal Systems**: Jurisprudence has a profound impact on the development and evolution of legal systems. Legal theories and principles often arise from jurisprudential discussions. For example, the concept of "natural law" has influenced the development of human rights laws and international law.

4. **Legal Reform and Progress**: Through the study of jurisprudence, scholars can identify shortcomings and injustices in existing legal systems. This knowledge can be a catalyst for legal reform and the creation of more just and equitable laws and institutions.

5. **Ethical Considerations**: Jurisprudence often delves into the ethical foundations of law. It raises questions about the relationship between law and morality, which is crucial for addressing issues of justice and fairness within a legal system.

6. **Critical Thinking and Analysis**: Jurisprudence encourages critical thinking and analytical skills. Legal scholars and practitioners must critically evaluate legal principles and arguments, and jurisprudence equips them with the tools to do so effectively.

7. **Legal Philosophy**: For those interested in philosophy, jurisprudence offers a rich area of philosophical inquiry. It engages with questions about the nature of authority, the role of government, and the limits of law, making it a fertile ground for philosophical exploration.

8. **Global Perspective**: Jurisprudence is often international in scope. It provides a platform for understanding legal systems and principles from different cultures and nations, contributing to a broader perspective on law and justice.

9. **Problem-Solving**: Jurisprudence helps individuals develop problem-solving skills, which are valuable not only in legal professions but also in various other fields where complex issues of regulation, ethics, and justice arise.

10. **Citizen Engagement**: A basic understanding of jurisprudence can empower citizens to engage with legal and political systems more effectively. It enables them to participate in discussions about laws, rights, and justice, which is essential for a functioning democracy.

In summary, jurisprudence is significant because it goes beyond the practical application of law; it provides the intellectual foundation for understanding, critiquing, and improving legal systems, ultimately contributing to the development of more just and equitable societies.

Ancient Perspectives:

1. Mesopotamia:

● **Legal Codes**: Mesopotamia is known for the Code of Hammurabi, one of the earliest known legal codes. It contained provisions for various aspects of life, including contracts, property, and criminal offenses.

● **Principles**: The Code of Hammurabi introduced principles of justice, such as the idea of "an eye for an eye" as a form of retributive justice.

● **Role of Rulers**: Rulers in Mesopotamia, like Hammurabi, played a key role in codifying and enforcing laws. The code reflected the authority of the king.

2. Greece:

● **Legal Philosophy**: Greek legal thought was heavily influenced by philosophers like Plato and Aristotle. Plato's “Laws” and Aristotle's “Nicomachean Ethics” explored the relationship between law, justice, and ethics.

● **Democracy**: Athens, in ancient Greece, is often credited with the development of democratic principles, which had a significant impact on legal systems and governance.

3. Rome:

● **Roman Law**: Roman law was highly influential and laid the groundwork for many modern legal systems. It emphasized the importance of written law and legal precedents.

● **Categorization**: Roman law categorized legal matters into "ius civile" (civil law) and "ius gentium" (law of nations), contributing to the concept of universal legal principles.

4. Early Islamic Jurisprudence:

● **Sharia:** Early Islamic jurisprudence was based on the Sharia, which draws its principles from the Quran and Hadith (sayings and actions of Prophet Muhammad). It covers various aspects of personal, family, and societal life.

● **Ijma and Qiyas**: Islamic legal thought introduced concepts like "ijma" (consensus) and "qiyas" (analogy) as methods for interpreting and applying Islamic law.

In all these ancient civilizations, religion, morality, and custom played significant roles in shaping legal systems. These early legal systems often served not only as instruments for maintaining order but also as expressions of the prevailing values and beliefs of their societies. Studying these ancient perspectives on law provides a foundation for understanding the historical development of legal thought and its enduring influence on contemporary legal systems.

No other country's judicial system has a more illustrious or lengthy history than India's. Prior to the advent of agriculture, when man was in the hunting stage, he mostly lived in forests and subsisted on food like fruits, nuts, and animal flesh. During that time, man still belonged to tribal society, and customs still governed his daily activities. At that point in societal evolution, there was no private property because the forests had not been cleared for agriculture. The males of the clan hunted together, and they all shared in the consumption of the game that was killed. Private property did not exist until the beginning of agriculture and the clearing of forests. One individual insisted that a specific piece of property was solely his, another claimed ownership of another piece of land, etc. It was necessary to establish a criminal code with property protection as its primary goal in order to defend this property.

There is no evidence of the development of judicial procedure in the early Vedic eras. The idea of 'Dharma', or the standards of moral behaviour, as presented in the many manuals that interpret the Vedic writings, such as '*Purāṇas*' and '*Smṛti*', had a significant influence on ancient Indian law. The King was subject to 'Dharma', which he was required to respect, and had no independent authority. A clear line was drawn between a civil wrong and a criminal offense. While criminal offences were judged by the concept of sin, civil wrongs were primarily conflicts involving material possessions.

Even before the early Vedic times, India had a distinct legal history that dates back to the Neolithic era (7000 BC to 3300 BC). From the Bronze Age to the Indus Valley Civilization, there was a set procedure for civil and criminal adjudication. Ancient literature like the *Vedas, Smṛtis, Upaniṣadas,* etc. may have the proof. Ancient Indian law was unique in that it was secular in nature and based on the Dharma Principle. (Ancient Indian law was distinct in that it was founded on the Dharma Principle and was secular in nature.) The Indian population at the time was accustomed to the idea of obeying the law and had access to legal channels for resolving both civil and criminal disputes. *Smṛtis* in ancient India emphasised the need for a capable judicial system to carry out Dharma-based justice and it emphasised that the King's first duty was the administration of justice. The King was in charge of upholding the law, ensuring public security, and punishing criminals.

The classical Hindu legal system was unusual in comparison to modern law because it followed a special set-up of law and polity with a certain set of ideals. A historically autonomous school of legal theory and practice existed in ancient India, which constituted a distinctive tradition of law. Throughout the Vedic era, the preservation of dharma, which is Sanskrit for morality and obligation, was the primary goal of the law. Dharma entails both moral and religious obligations. It covers a vast range of human activities, such as ritual purification, personal hygiene practices, and dress codes, in addition to laws and court proceedings. The main principles for trying to live a good life were supplied by dharma. According to Justice Markandey Katju "Jurisprudence is the philosophy of law. In other words, it seeks to explain what law is about in the most general way. Most laws deal with specific subjects e.g. the Indian Penal Code (which deals with crimes), the Income Tax Act (which deals with the imposition and collection of Income Tax), the Industrial Disputes Act, etc. Jurisprudence, on the other hand, discusses law in the most general way e.g. what is law, what is its purpose, how it originated, how does it develop, what are its basic concepts and structure, what is its

relation with other social phenomena like the economy, the social system, etc." Together with the enormous advancements in mathematics, astronomy, medicine, grammar, philosophy, literature, etc., ancient India also saw enormous advancements in law. This is demonstrated by the numerous legal treatises that were authored in ancient India (all in Sanskrit). Only a very small portion of the entire body of legal literature has withstood the test of time, yet even that portion is quite substantial.

Three important ancient sources of law – (i) Veda (ii) *Smṛti* (iii) *Ācāra*.

(i)Vedas: Sources of ancient law:

It is stated that the Vedas are the source of all Hindu law (also called *Śruti*). The word is derived from the root '*Śru*' which means 'to hear'. Theoretically, it is the fundamental and supreme basis of Hindu law. *Śruti*, which means from Sanskrit as 'whatever is heard' refers to the collection of most illustrious, ancient religious writings that make up the core of Hinduism. These are collections of hymns, praises, and ceremonial instructions that were originally spoken. Veda is the Sanskrit word for revelation. Hindus believe that the law is divine. Via the Vedas, God revealed it to the human race. Several ascetics and stages have expanded and refined the idea of life as it is portrayed in the Vedas. Rather of being monarchs, ancient Hindu sages served as legislators. Because of their deep intellectual speculation, foresight, and strong affection for man-to-man social interactions, these sages could be regarded as semi-divine beings.

'The Vedas,' says Medhātithi, "*vidanty ananyapramāṇavedyaṃ dharmalakṣaṇam attham asmād ity vedāḥ*." **(2)** It means dharma, which cannot be learned from any other source of knowledge, and they are the source from which individuals learn (vidanti) the good' The simple fact that a text bears the name 'Veda' does not automatically make it an authoritative text, "*kiṃ tarhi apauruṣeyatve saty anuṣṭheyārthāvabodhakatvād viparyayābhāvāc ca*." **(3)** Which means 'but rather, in the sense that it lacks a human creator, because it instructs what must be done and because it is error-free.' The majority of Hindu scriptures share this understanding of the Vedas, which identifies the four Vedas as the *Ṛgveda* (which contains songs and hymns and is the oldest of the four), *Yajurveda* (which includes mantras and rituals), *Sāmaveda* (which contains music and rituals), and *Atharvaveda* (which includes hymns and prayers, includes magic spells). This version is most closely related to the *Pūrva-Mīmāṃsā* philosophical school.

But, in the Hindu legal tradition, the authors of Dharmaśāstra transferred the emphasis from sacrifice to the *varṇāśrama* dharma system of classes and life stages. By asserting that what is good for the individual must be displaced in favour of what is good for the social system of castes and life-stages, Hindu jurisprudence effectively reformed the *Mīmāṃsā* theology. So, the term "dharma in the Veda" is misleading and actually refers to the dharma as it has been analysed in the *Mīmāṃsā* tradition. Dharma, according to *Mīmāṃsā*'s theology, is "*codanā lakṣaṇo'rtho dharmaḥ*" **(4)** it means 'The duty is an object distinguished by a command' and primarily concerns itself with carrying out rites as they are prescribed in the Vedic texts correctly and on time. In contrast, a distinct dharma with a broader scope and a stronger social focus was conceived in the *Dharmaśāstra*. As a result, two different Hindu theological interpretations of dharma emerged about the same time. The tradition swiftly resolved any apparent inconsistencies or issues between the various dharma views.

Mīmāṃsakas say "*athāto dharmajijñāsā.*" **(5)** its means 'Now is the enquiry of dharma.' In favour of assessments of the *Mīmāṃsā* epistemological and ontological commitments, which shape the system's conception of ritual and personality, the complete *Mīmāṃsā* system has far too frequently been disregarded. The acceptance of a particular sort of revelation, the uncreated and eternal Word known as Veda, which provides the framework for all intrapersonal and interpersonal activities and objectives, is perhaps the most significant of these commitments. The Vedas' *Mīmāṃsā* interpreters are freed from needing to look for the author's objectives because there is no acknowledged author for them. The Vedas, therefore, have a "semantic autonomy," **(6)** just like all texts that have been subjected to hermeneutic practise. Furthermore, revelation teaches a process, the ritual sacrificial process, rather than the history of a deity or deities. Dharma, according to the *Mīmāṃsā*, is the continual performance of that sacrifice together with all the added conditions, adjustments, and details. According to the Pūrva- *Mīmāṃsā*, understanding dharma basically equips one to practise it properly.

Learning to distinguish between what is primary and what is secondary is the first step in comprehending the Vedic precepts. *Mīmāṃsā* provides hermeneutic rules for determining the principal and subsidiary elements of a rite through a hierarchical list of language features that signal priority, including: (i) direct textual statement, grammatically understood; (ii) similar or overlapping word meaning; (iii) syntax; (iv)

context; (v) position of a word in the text or an item in the ritual performance; and (vi) presence of mere name.

All of the early *dharmaśāstra* texts, especially those of *Āpastamba*, demonstrate a definite dependence on *Mīmāṃsā* teachings. *Mīmāṃsā* was assimilated into the scholastic tradition of *Dharmasūtra* from the very beginning. The Vedic *Mīmāṃsā* ethos, its epistemology, and its hermeneutics were absorbed by Dharmasūtra. But Dharmaśāstra also adapted these fundamental components of *Mīmāṃsā* to the commonplace realm of human civilization. As a result, while theological affirmations of Veda's perfection and unquestionable authority are frequently found in dharma scriptures, the system of *varṇāśramadharma*, Veda's theological partner, became the new focus of theological debate. The question of whether Dharmaśāstra established for the first time an idea of dharma that was central theologically or reimagined and reconfigured a previous, more limited, "sense of dharma in the Vedas" [(7)] is up for debate. In either instance, it is evident that Dharmaśāstras general dharma theology involves a substantial social component, in contrast to *Mīmāṃsā*.

(ii) *Smṛtis*: Sources of ancient law:

The Sanskrit word '*Smṛti*,' which means 'to remember,' is where *Smṛti* gets its name. *Smṛti*, in its simplest form, refers to God's words that the sages remembered and recorded in their own words after having forgotten to speak them in their original form. *Smṛti* therefore means 'whatever is recalled.' The *Smṛtis*, which include *Manusmṛiti*, *Yājñavalkya Smṛti*, and the *Smṛtis* of *Viṣṇu, Nārada, Parāśara, Āpastamba, Vaśiṣṭa*, and *Gautam*, among others, are the real sources of Hindu law.

These *Smṛtis* were not created by the government or any other legislative body. These were texts produced in antiquity by particular Sanskrit scholars who had focused on the study of law. There are two different types of *Smṛtis*: *Dharmasūtras* and *Dharmaśāstras*. While *Dharmaśāstras* provides the regulations for Hindus' moral code of behaviour, *Dharmasūtras* contains the laws governing government, caste, interpersonal relationships, economic matters, eating customs, etc. These included regional rites and traditions as well as Vedic sermons on the many duties one must perform in different relationships. *Sūtras* have a concise, clear meaning that is simple to memorise. There are three different kinds of *Sūtras*: *Śrauta Sūtra* (connected to rituals), *Gṛhya Sūtra* (related to home matters), and Dharma *Sūtra* (related to discipline and Law-

related). The Dharma *Sūtra's* four most influential intellectuals were Gautama (on legal and theological matters), *Baudhāyana*, *Āpastamba*, and *Vaśiṣṭa* (remarriage of virgin widows). Our moral code is outlined in the *Dharmaśāstra*. It was more exact and organised than other writings because it was based on the *Dharmasūtras*. The three most significant topics covered in the *Dharmaśāstra* were *Ācāra* (rules of religious observance), *Vyavahāra* (deals with civil law), and *prāyaścitta* (deals with penance).

A comparison of Medhātithi with the work of his predecessor Kumārila in the other branch of learning that laid claim to dharma, the *Pūrva- Mīmāṃsā*, shows that Medhātithi borrowed heavily from Kumārila's explication of the sources. A evaluation of Medhātithi's work with that of his predecessor Kumārila in the *Pūrva- Mīmāṃsā*, the second branch of knowledge that claimed to be the source of dharma, reveals that Medhātithi substantially borrowed from Kumārila's description of the sources. *Manusmṛiti* says: "*Śrutistu vedo vijñeyaḥ*" it means 'Realize that the Vedas are *Śruti*'. Hinduism has traditionally regarded *Śrutis* as the top authorities. It is said in *Manusmṛiti* -

"*ved'khilo dharmamūlaṃ smṛtiśīle ca tadvidām ।*

ācāraścaiva sādhūnāmātmanastuṣṭireva ca ॥" **(8)**

It means "The sacred law is derived from the entirety of the Veda, then from custom and virtuous behaviour of individuals who have a deeper understanding of the Veda, as well as from the practices of holy men, and (lastly) from self-gratification". It is said about law in *Manusaṃhitā* –

"*vedaḥ smṛtiḥ sadācāraḥ svasya ca priyamātmanaḥ ।*

etaccaturvidhaṃ prāhuḥ sākṣād dharmasya lakṣaṇam ॥' **(9)**

(iii) *Ācāras*: Sources of ancient law:

The word '*ācāra*' means '*sadācāra*'. Indian laws are made on the basis our *ācāra* or *sadācāra* (Indian culture and tradition) as our society is dominated by *Dharmaśāstras*. *Ācāra* is a very restricted source of customary law. The *smṛtis* refer to *ācāra* as a source of law, and they do so by using several different expressions, namely, apart from *ācāra*, *sadācāra* or *śiṣṭācāra*, and also *śīla* and samaya signifying roughly 'conduct', or rather 'agreement, convention or usage'; while the latter two words, somewhat distant from

ācāra, *sadācāra* or *śiṣṭācāra*, are frequently employed in the *smṛtis* to indicate a proper understanding of the third source of law. *Ācāra* (ideal custom), *sadācāra* (custom of the good), and *śiṣṭācāra* (custom of the *śiṣṭas*, i.e. the disciplined) are for instance mentioned in Manu, Vasiṣṭha, Baudhāyana and Viṣṇu. The praise of cars is especially exuberant in Vasiṣṭha who gives the following statement (VI, 1): "(To live according to) the rule of conduct is doubtlessly the highest duty of all men. He whose soul is defiled by vile conduct perishes in this world and in the next." **(10)** In comparison, the *Vanaparva* verse from the *Mahābhārata* is clearer and provides enough context for interpretation. It reads as follows: "And virtuous conduct is indicated by acquisition of knowledge, pilgrimage to sacred places, truthfulness, forbearance, purity, and straightforwardness... Those good men who know well the consequences of the fruition of their good and evil deeds, are commended by virtuous men." **(11)** We can derive the following conclusions about the Constitution as a source of law from all these indicators and justifications. *Ācāra* is granted on the condition that the practise is well-established, at best antiquated, unambiguous, and not primarily in conflict with *śruti* and *smṛti* wisdom, and that it is still recognised as *śiṣṭācāra*, the honoured practise of the 'virtuous' or 'good.' Vasiṣṭha thus declares: "A *siṣṭa*... is one whose heart is free from (wordly) desires and (only) such acts of śiṣṭas are (to be held as) dharma for which (wordly or secular) cause (or motive) cannot be assigned." **(12)**

King's courts and *Vyavahāra* law:

The *Vyavahāra* law can be analysed after taking the ecclesiastical courts and the king's courts jurisdictions into account. The phrase "*Vyavahāra* law" can be described as law that is either founded on or related to worldly practices since it is typically used in opposition to the concept of *tattvajñāna* (spiritual consciousness). It primarily relates to the customs followed by the populace, with the kingly power emerging and interfering solely to give effect to it, as is seen from the text of the *nārada*:

"*naṣṭe dharme manuṣyeṣu vyavahāraḥ pravartate* ।

draṣṭā ca vyavahārāṇāṃ rājā daṇḍadharaḥ kṛtaḥ ।।" **(13)**

Which means performance of duty having fallen into disuse, positive law has been introduced, the king as superintending the law is invested with power to punish. The premise of the king's exclusive divine prerogative is not acknowledged in the Hindu

religion. In reality, the monarch has more divine liabilities than rights since *Vyavahāra* dharma (legal obligations) is linked to Raj dharma (royal duties). The *smṛtis*, such as Manu (VIII. 1–20), *Yājñavalkya*, *Vyavahāra adhyāyas* (1-4), and *ācāra adhyāyas*, among others, put numerous obligations on the king and hold him accountable for following the *smṛtis* and the Vedas' directives to the letter. The monarch is therefore required by the divine law to administer justice between subjects, and he is endowed with the power of punishment to carry out this responsibility successfully. The *Vyavahāra* law and the authority behind it are both products of Raj dharma, or the king's obligations. In fact, the *Vyavahāra* law binds both the king and his subjects. According to *Yājñavalkya*'s definition of *Vyavahāra* law in *Vyavahārādhyāya* 2.5,

"*smṛtyācāravyapetena mārgeṇādharṣitaḥ paraiḥ ।*

āvedayati ced rājñe vyavahārapadaṃ hi tat ।।" **(14)**

Which means if one, aggrieved by others in a way contrary to the *smṛtis* and usage, complains to the king, that is a matter of *Vyavahāra* (civil law).

Although there are significant changes made to the spiritual jurisprudence to meet the needs of the *Vyavahāra kāṇḍa*, the *Vyavahāra* branch of Hindu law is mostly founded on it. It will now be interesting to discover how closely the *Vyavahāra* law's jurisprudence resembles the spiritual law. The desire of acquiring something that is absolutely impossible to obtain through other means and the dread of losing it serves as the sanction in spiritual or ecclesiastical law. The prospect of getting what the community, through its representative, the king, can and does secure for a man as well as the dread of receiving punishment from that representative of the society serve as the sanction under the *Vyavahāra* law. This is how spiritual law differs from civil law, although in both situations there is something to be gained or lost as a result of actual or constructive coercion. The two statutes are identical in all other regards, and they were both assigned to the same categorization. The niyama and *parisaṃkhyā vidhis*, as well as the *Vyavahāra vidhis*, have been classified as *vidhis* proper. Both in Vedic law and *Vyavahāra* law, the principles of *arthavāda* hold the same status. In the Vedic law, they are elaborately divided into *guṇavāda*, *anuvāda*, and *bhuthārthavada*, but in *Vyavahāra* law, they largely take on the role of anuvāda, which is another word for gloss or explanation.

The various stages that Hinda Law has undergone can be seen by looking at its history:

(1) Unknown writing; *śrutis* and *smṛtis*.

(2) The beginning of writing is the stage of written *sūtras*.

(3) Law codification.

(4) The Buddhist era.

(5) The Mahomedan era.

Modern Jurisprudence:

1**. Emergence of Positivism and Legal Positivism in the 19th Century**:

● **Positivism**: Positivism, in general, refers to a philosophical approach that emphasizes empirical observation and the scientific method as the foundation for knowledge. In the context of jurisprudence, positivism emerged in the 19th century as a reaction against earlier natural law theories. Legal positivism, as developed by figures like Jeremy Bentham and John Austin, holds that law is a social construct and that its validity is derived solely from human-made sources, such as legislation or legal precedent. It rejects the idea that morality or ethics are inherent in law.

2. Influence of Utilitarianism and Legal Realism on Modern Jurisprudence:

● **Utilitarianism**: Utilitarianism, championed by philosophers like Jeremy Bentham and John Stuart Mill, is a consequentialist ethical theory that posits that the best action is the one that maximizes overall happiness. In jurisprudence, utilitarianism has influenced legal thought by advocating for laws and legal decisions that promote the greatest good for the greatest number. It prioritizes the pragmatic and social consequences of legal rules.

Legal Realism: Legal realism emerged in the early 20th century and challenged the formalistic and doctrinal approach to law. Legal realists, such as Oliver Wendell Holmes Jr., argued that judges often make decisions based on personal and subjective factors, rather than purely applying existing legal rules. They emphasized the importance of understanding how law operates in practice and how it affects people's lives.

3. Contemporary Theories in Modern Jurisprudence:

● **Critical Legal Studies (CLS)**: CLS is a contemporary school of thought that emerged in the late 20th century. It critiques traditional legal doctrines and argues that law is often a tool of

the powerful and that legal decisions reflect social and economic interests. CLS scholars examine how law can perpetuate inequality and advocate for more equitable legal systems. ●**Feminist Jurisprudence**: Feminist jurisprudence, influenced by feminist theory, focuses on how the law reflects and perpetuates gender-based inequalities and discrimination. It explores issues such as women's rights, reproductive justice, domestic violence, and sexual harassment from a feminist perspective. Feminist jurisprudence seeks to reform and reshape legal systems to address these inequalities.

These contemporary theories and approaches in modern jurisprudence reflect the ongoing evolution of legal thought. They challenge traditional notions of law's objectivity and neutrality and emphasize the social, political, and ethical dimensions of law. They have been instrumental in addressing issues of justice, equality, and the impact of law on society in the 21st century.

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2. *Manusmṛti*: with '*Manubhāṣya*' of *Medhātithi* 2.6.

3. *Manusmṛti*: with '*Manubhāṣya*' of *Medhātithi* 2.6.

4. *Mīmāṃsādarśanam* 1.1.2.

5. *Mīmāṃsādarśanam* 1.1.1.

6. Paul Ricoeur's, Interpretation Theory: Discourse and the Surplus of Meaning (Fort Worth:TCU Press,1976), pp.30-I.

7. Patrick Olivelle, "The Semantic History of Dharma: The Middle and Late Vedic Periods," Journal of Indian Philosophy 32 (2004): 491-511.

8. *Manusaṃhitā* 2.6.

9. *Manusaṃhitā* 2.12.

10. Vide Manu IV, 155-158; *Vasiṣṭha* VI, 1; 6-8; 43; *Baudhāyana* I, 1, 1, 4-6; *Viṣṇu* LXXI, 90; (all ref. ubi cit.). *Baudhāyana* for instance gives (ibid. I, 1, 1, 6 (trans. G. *Bühler*)) the following description of *śiṣṭas* (*śishṭas*): "(Those are called) *Śishṭas* who, in accordance with the sacred law, have studied the Veda together with its appendages,

know how to draw inferences from that, (and) are able to adduce proofs perceptible by the senses from the revealed texts."

11. *Mahābhārata*, *Vanaparva* CCVI, trans. P.C. Roy, vol. VI, (Calcutta, n.d.), pp. 457-8.

12. *Vasiṣṭha* I, 6-7 (trans. P.V. Kane, History of *Dharmaśāstras*, ibid., pp. 825-6, with further references); ef. the trans. of G. *Bühler*, op. cit., p. 1.

13. *Nāradasmṛti* 1.2.

14. *Yājñavalkya*, *Vyavahārādhyāya* 2.5.

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