

LAW AS A SOCIO-CULTURAL CONSTRUCT: READINGS FROM THE MAHABHARATA

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***A**bstract—The present paper offers a note on the relation of the disciplines of law and literature and shows as to how the study of literature is imperative to sharpen the understanding and practice of law. Keeping Vyasa's Mahabharata as a reference point and using Kisari Mohan Ganguly's The Mahabharata as a primary text, the paper analyzes how the ancient epic is home to several discourses. It analyzes the penalty clauses keeping in view the Virata Parva. The paper further draws upon the studies of Patrick Olivelle and Prof. Sutton to analyze how one of the meanings of law in the Indian context is dharma. The paper bears an analysis to the polarizing values of law and literature and leaves the reader with the question; if law can be better understood through the lens of morality.*

Keywords: Law and Literature, Morality, Vyasa's Mahabharata, Dharma, Legal Positivism, Penalty Clauses.

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I. INTRODUCTION

There has been an interdisciplinary and multidisciplinary approach to academic learning in the past few decades. The intersection between the disciplines of Law and Literature offers several specimens from this perspective. Richard Posner, one of the earliest champions of this interdisciplinary approach, advocates this trend in his article, “Law and Literature: A Relation Reargued.” Posner postulates, “After a century as an autonomous discipline, academic law in America is busily ransacking the social sciences and the humanities for insights and approaches with which to enrich our understanding of the legal system. One of the humanities to which academic lawyers are drawn is the study of literature.”¹

Posner argues that the field of literature has something substantial to contribute to the understanding of judicial opinions, and provide tools to enable improvements in the understanding and practice of law and justice. The intervention between law and literature is also fundamental in inculcating values of humanness into the field of law and its subsequent practice. While citing Wigmore’s Introduction to *The Lawyer in Literature*, Posner pinpoints that people from legal backgrounds must extensively read great literature for a more profound and nuanced understanding of human nature. Perhaps Wigmore and Posner wish to derive that any great work of literature, provides learning into the nuances of human behaviour and psychology, which when transmuted to understanding judicial opinions and administering justice, makes the process more humane. The purpose of this interface is therefore two-fold. Firstly, it is “preserving humanistic values in law”² and to inculcate a sense of subjectivity in the approaches of law as a discipline.

Now that it is established that the study of literature is an essential element in the reading of the law, it is imperative to choose wisely and judiciously which literature would serve to be most effective in this interface. One of the trusted ways is to depend upon the classic canonical literary texts, what George Orwell refers to as ‘great literature’. Richard Posner cites Orwell in highlighting the way of cataloguing what constitutes great literature. Orwell takes refuge in the Darwinian trick of the survival of the strongest to determine what great literature is and what survives the test of time for “...survival is the test of greatness in literature”³. While there is no litmus test to examine the same, one of the factors is the ability to survive in the competition of the literary marketplace. The term marketplace, Posner explains, refers not to the “commercial profitability but of reputation”⁴. Simply put, a text which

¹ Richard Posner, *Law and Literature: A Relation Reargued*, VIRGINIA LAW REVIEW, Nov. 1986, at 1351.

² Richard Posner, *Law and Literature: A Relation Reargued*, VIRGINIA LAW REVIEW, Nov. 1986, at 1353.

³ *Id.*, at 1356.

⁴ *Id.*, at 1355.

survives the transcendence of time and space falls under the category of great literature and it would not be too far-fetched to state that Vyasa's *Mahabharata* falls into this category of great literature. The understanding and study of the *Mahabharata* has the potential to unravel and open doors in providing tools, insights and approaches that lay bare not only the pitfalls in the legal systems but also provide humanistic solutions to it.

Dr Samuel Johnson writes concerning Shakespeare's greatness and transcendental value in his work *Preface to the Plays of William Shakespeare* that all great literature contains elements or value systems that do not change over time. These universalistic themes form a crucial subset in the larger canon of great literature. It is, therefore, an interesting notification that for any piece of literature to survive, it must contain and deal with universalistic themes. Some of these universalistic themes include love, ambition, death and an intricate understanding of human nature. To this array of universalistic subjects, Richard Posner adds the understanding of the legal system as one of the themes stating that "law is a remarkably unchanging facet of human social existence. Special doctrines and procedures may change, but the broad features of the law do not"⁵. For this reason, legal themes find frequent mentions in all classic works of literature, and the *Mahabharata* is no different. The legal systems that the world of the *Mahabharata* occupies with its dictums and procedures continue to grapple modern understanding and nurture the contemporary knowledge of what law and justice constitute today.

In the canon of Sanskrit Literature, the *Mahabharata* is often referred to as an *itihasa*. When translated literally, *itihasa* means "thus it happened", i.e. a historical account. Whenever the ideas of law and justice need to be examined and re-evaluated, the *Mahabharata* becomes a crucial source one refers to for the knowledge of the functioning of the legal system in the past and its continued relevance in the present. Even for the gradual process of recording developments in the legal systems from antiquity to modernity, the *Mahabharata* with its ever-expansive ideas is a reliable source. "...in a culture that has non-literary records, those records or literary accounts generally provide more, and more accurate, information about the legal system than does literature"⁶.

The *Mahabharata* astutely speaks of the punishment of the Pandavas in the Virata Parva if they are discovered in the year of their incognito. A modern day understanding of the conditions should remind the readers of law of the penalty clause that the defendant avoids by technicality. The incident occurs towards the end of the *Virata Parva* where there is an ambiguity about the completion of the *Pandavas'* thirteen years of stipulated exile. As per the rules of the gamble, which the Pandavas lost, they were to undertake an exile of twelve years and one year incognito, failing which they were to go through

⁵ *Id.*, at 1356.

⁶ *Id.*, at 1357.

the entire trail again. The agreement that was settled between the two rival clans post the sequel to dicing resembles contract formation in modern times. Towards the end of the *Virata Parva*, the Kauravas refused to accept the completion of the thirteenth year of incognito, for they believed that the Pandavas' identity was revealed before the completion of the tenure. Thus, the verbal contract that contains a penalty clause was foiled. The penalty clause stated that the Pandavas would have to undergo the same process of twelve years of exile and one year of incognito all over again if they were discovered at any point of time in the period of incognito. However, Bheeshma saves the situation by pointing out the completion of the tenure. Notifying Bheeshma's words, Ganguli writes:

The wheel of time revolves around its divisions, viz., with Kalas and Kasthas and Muhurtas and days and fortnights and months and constellations and planets and seasons and years. As a consequence of their fractional excesses and the deviations of also of the heavenly bodies, there is an increase of two months every five years. It seems to me that calculating this wise, there would be an excess of five months and twelve nights in thirteen years. Everything, therefore, that the sons of Pandu had promised, hath been exactly fulfilled by them.⁷

It is, therefore, reasonable to conclude that even in the *Dvapara Yuga*, the time-span of the *Mahabharata* a contract was enforceable with specific penalties.

II. DISCUSSION

In the chapter entitled "Law and Morals" from his exemplary work *Jurisprudence and Legal Theory*, V.D. Mahajan traces the co-relation between law and morals in the history of legal understanding. There existed a definitive distinction between law and morals until the writing of the *Mimamsa* which made a distinction between obligatory and recommendatory dictums. However, ancient Indian customs have always witnessed law and morals being intrinsically linked. There was a stage of undifferentiated ethical customs called as the pre-legal stage when law and morals was the same thing. This stage is catalogued in Paton's four stages of development of law and morals. Paton further argues that the difference between law and morals is too narrow an approach and any ethical or moral duty cannot function without considering the consequences on the society and the people at large. For instance, Yudhishtira is

⁷ Kisari Mohan Ganguly, *The Mahabharata of Krishna-Dwaipayana Vyasa: Translated into English Prose from the Original Sanskrit Text by Kisari Mohan Ganguli*, Internet Archive 1681 (Aug. 7, 2023), https://archive.org/details/the-mahabharata-of-Krishna-dwaipayana-vyasa-complete-18-volumes-kisari-mohan-ganguli_202008/page/n7/mode/2up (last visited on June 12, 2023).

constantly battling with the results his actions bear. He distrusts and condemns the *ksatriya* way of living that brings about a cataclysmic end to the society there were living in.

Moral rules are based on good intention and goodwill of an individual. Such a person is free from any moral lapses or blame. “If a person does something forbidden by moral rules or fails to do what they require; the fact that they did so unintentionally and in spite of every care is an excuse from moral blame”.⁸ This was the system of governance that the *Mahabharata* propagates when Yudhishtira plays the disastrous stakes at the *Jayant Sabha*. Duryodhana is villainized because his intentions are misplaced, but Yudhishtira escapes the blame. However, he is condemned for the lie he spoke to Drona on the battlefield. What is the difference between two moral lapses? In the first instance, Yudhishtira has his intentions at the right place while in the lie spoken to Drona, the intent was to kill and cause injury. This also reminds the readers of the concept of *Samasika Dharma*. Therefore, the foundation of law is not only the conventional notions of morality (*samasika dharma*) but also the accepted notions, ideals and principles of certain social groups and most significantly the “forms of enlightened moral criticism urged by individuals whose moral horizons has transcended the morality currently accepted”.⁹ The legal system must accept that there is a moral obligation to obey.

One of the lenses through which law is represented in the *Mahabharata* is through the larger prism of *dharma*. Of the many definitions and meanings, the term *dharma* occupies, one that possibly deserves further analysis is law as *dharma*. A significant category in the understanding of law as *dharma* is through the *Dharmasastras*. Nicholas Sutton from the Oxford Centre for Hindu Studies observes that *Dharmasastras* are the law books that the Indian society has handed down over the centuries and are available for easy readership. One of the most prominent law books are the *Manusmriti* (the Laws of Manu), while others include *Vishnu Smriti*, Patanjali’s *Yoga Sutras* and *Yajnavalkya Smriti*. These are pages after pages of written codes and rules of conduct handed to Indian society for the smooth functioning of personal and public lives. However, this association of *dharma* with law makes the concepts extremely narrow, inflexible, exclusive, rigid, and largely impractical. One is left constantly pendulating between the written law and the will to follow the written consciousness.

In the beginning, this world was only Brahman, only one. Because it was only one, Brahman had not fully developed ... so it created the law (dharma), a form superior to and surpassing itself. And the law is here the ruling power [of gods]. Hence, there is nothing higher than the law. Therefore, a weak makes demands of a stronger man by appealing to the law, just as one does by

⁸ V.D. MAHAJAN, JURISPRUDENCE AND LEGAL THEORY 99 (Eastern Book Company, 6th ed. 2022).

⁹ V.D. MAHAJAN, JURISPRUDENCE AND LEGAL THEORY 104 (Eastern Book Company, 6th ed. 2022).

appealing to the king. Now, the law is nothing but the truth. Therefore, when a man speaks the law, people say that he speaks the truth. They are really the same thing.¹⁰

There are multiple passages from the *Mahabharata* and, more specifically, from the *Gita*, which associates *dharma* with law.

dharma-kṣetre kuru-kṣetre samavetā yuyutsavaḥ |
māmakāḥ pāṇḍavāścaiva kim akurvata saṁjaya ||

In the field of justice, in the field of the Kurus, come together, desiring to fight. My sons and indeed the sons of Pāṇdu, What did they do, O Saṁjaya?¹¹

kula-kṣaye praṇaśyanti kula-dharmāḥ sanātanāḥ |
*dharme naṣṭe kulaṁ kṛtsnam adharmo 'bhibhavatyuta ||*¹²

In the destruction of the family, the eternal family laws are lost. When the law is lost, Lawlessness overcomes the entire family too.

These two expressions, distinctly, associate *dharma* with law, justice and its correct implementation. In the first sloka, the battlefield (*Kuruksetra*) is associated with the land of justice where righteousness would be restored. Interestingly, the first word of the Bhagavad Gita is also *dharma*. The second passage goes a step further and speaks of *kula dharma*, the *dharma* of the family or community and how a total collapse of an order takes place when *dharma* is lost, leading to the complete destruction of the entire family, clan or community. The result is lawlessness in society and the community at large. Therefore, our *dharma* can also be that of the *kula* (community/family/lineage) that we are born into, which becomes intrinsic to our identity. In the world of the *Mahabharata*, this further determined the rights, duties and status quo of an individual.

A significant episode in the *Mahabharata* is when *Krishna* teaches Arjuna the correct definition of *dharma* when the latter feels bound to kill Yudhishtira by virtue of an oath taken long back. He gives us an example of Sage Kausika and how the latter was deployed to the realm of hell for always keeping his oath of speaking the truth at all times. One learns through the story of Kausika that it is futile to live by the rules because each situation is individualistic, different and subjective. Applying rigid rule books might leave society paralyzed and dysfunctional. Nicholas Sutton notifying Krishna's words

¹⁰ PATRICK OLIVELLE, *MANU'S CODE OF LAW: A CRITICAL EDITION AND TRANSLATION OF THE MANAVA DHARMAŚASTRA* 56 (Oxford University Press 2005).

¹¹ Zoe Slatoff, Introduction, *Dharma, Truth and Justice: OCHS Online Retreat*, OXFORD CENTRE FOR HINDU STUDIES (Aug. 2020, 00.05.00-00.07.06).

¹² *Id.*, at (00.07.10-00.09.05)

explains that *dharma* was created for the welfare of all beings, and is that which sustains all living beings.

Krishna, who has been maintaining the role of the principal advisor for the characters of the epic and readers, assures that while *sruti* (scriptures) are one of the key entry points in understanding *dharma*, it is not the only one either. He clarifies that the scriptures and the rule books do not refer to individual cases despite being extensive in length. It only provides us with a set of governing principles and dictums as references, but its application is highly subjective, and personal. While the incompetence of the scriptures is highlighted, it brings home the postulate stated at the beginning that living by the rule books might leave both the public and the personal in a state of complete collapse. Krishna defines *dharma* by going back to the etymological root '*dhr*', which means to uphold, sustain, and maintain. It is whatever sustains living beings and whatever is for the benefit of the world and the universe at large. The idea of upholding the universe together is crucial for it suggests a utilitarian approach to the concept. Utilitarianism, as propounded by Jeremy Bentham, suggests the larger good for the largest number of people. Krishna's definition of *dharma*, by going back to its etymological root is also utilitarian in nature, and therefore when we associate *dharma* with law, it indicates a concept that bring about smooth functioning of the society. Therefore, the understanding and application of law like that of *dharma* are both subjective and situational.

Sabha Parva, the book II of the *Mahabharata*, observes Sisupala revolting against Krishna being the guest of honour in the *Rajasuya Yajna* amidst many equally honourable and wise men. Bheeshma explains that Krishna upholds the universe together and, therefore, the honour bestowed on him. The exaltation of Krishna in this aspect is crucial because irrespective of the *Vaishnavite* glorification of him as the divine, the text iterates that he is the sole cause of victory after the crucial eighteen-day war. One might call it the poetic justification of the text or the divine glorification of the latter centuries; the fact remains undisputed that it was Krishna's ingenious and crafty participation that established victory for the Pandavas. His presence in the *Mahabharata* is also significant for understanding the correct meaning of *dharma*, its subtleties, and its eventual establishment. "Krishna holds the universe together, for which reason we worship him and not others.... Like the Gayatri among Mantras, Krishna is among men."¹³ He establishes his purpose as an incarnation of the All-Preserver *Vishnu* through the establishment of *dharma* and by instilling the correct understanding of it amongst the mortals.

Perhaps a better way to resolve the moral complexities of human existence, if not eradicate it, is through this understanding of *dharma*. The following is

¹³ P. LAL, THE MAHABHARATA OF VYASA 102 (Vikas Publishing Pvt. Ltd. 1980).

an extremely popular verse that has occupied the imagination of both the popular masses and the academicians alike.

*yadā yadā hi dharmasya glānir bhavati bhārata |
abhyutthānam adharmasya tad ātmānaṃ sṛjāmyaham ||*

Indeed, whenever there is a warning,

Of justice, O descendant of Bharata, And a rising up of injustice, Then I manifest myself.¹⁴

It is interesting to note that in this popular verse from the *Mahabharata*, *dharma* is associated with the administration of justice. The passage speaks of the necessity of balancing *dharma* and it is being equated to justice. Maintaining *dharma* is essential to create not only a cosmic balance but also a mortal equilibrium. The passage simply states that whenever there is an imbalance in the world and *adharma* shoots up, Krishna, the avatar of Lord Vishnu, acting as the preserver, manifests himself and reinjects balance in the universe. This utilitarian concept of the larger good for the largest number of people is crucial for it brings in a significant conception of *dharma* as that of *sanaathan dharma* (eternal virtue). Evidently, *dharma* is a utilitarian entity, but the final decision of the right and the wrong, to analyze where the moral compass should point, is left to the individual's integrity and intelligence.

When speaking of *dharma* as law, it is significant to note Edmund Burke's idea, which Gurcharan Das mentions in his conclusion to *The Difficulty of Being Good*. He writes that societies are eventually "held together by laws, customs and moral habits", and it is these rules that are "meant to get citizens to collaborate rather than to fight. For instance, it is crucial to ask, what is the legal position of the five brothers marrying a woman? What are Karna's rights after he has crowned the King of Anga? Was the game of dice legal and was Draupadi legally wagered."¹⁵

This idea of *dharma*, which we most frequently encounter in the epic, has an intellectual and rational foundation, the proponents on which law and its multivariate aspect also rest. It is fascinating to note that on the fateful day of the game of dice leading to Draupadi's disrobing, no one turned to God. Only when the long strenuous discussion ended with no conclusion and Duhssasan attempted to disrobe the Chief Queen do we see her appealing to Krishna. Many scholars like Franklin Edgerton also treat it as a *Vaishnavite* intervention. The discussions on the legal rights of a husband over his wife and of a slave over his wife are all foregrounded on individual reasoning capacity. Das

¹⁴ Slatoff, *supra* note 11, (Bhagvada Gita 4.7).

¹⁵ GURCHARAN DAS, *THE DIFFICULTY OF BEING GOOD: ON THE SUBTLE ART OF DHARMA* 285 (Penguin Books India 2009).

explains how there is no appearance of the divine or a miraculous intervention to save the day in the Critical Edition of the text.

Das cites from Edgerton's forceful argument, "No Prayer of Draupadi; no explanation of the miraculous replacement of one garment by another; no mention of Krishna or any superhuman agency. It is apparently implied (though not stated) that comic justice automatically, or "magically" if you like, prevented the chaste Draupadi from being stripped in public. It is perhaps not strange that later redactors felt it necessary to embroider the story."¹⁶ What does an alternative narrative without a divine intervention suggestion to the readers? While it hints at an undeniable idea of agency granted to all humans, it also glorifies the character of Draupadi than of Krishna. Das notes, "the narrative is stronger without Krishna. The text is briefer, simpler and quicker. It helps build Draupadi's character-it is her own agency, her own *dharma*, which is responsible for the miracle rather than god's intervention. It vindicates her courage as she stands up to the political and social order, reminding the rulers about the *dharma* of the king."¹⁷

Gurcharan Das argues while referring to M.A. Mehendale's work, "Draupadi's Questions" that in the times of the *Mahabharata*, there existed complete authority of the husband over his wife but what remains unresolved through Draupadi's questionnaire "is whether the husband loses this authority when he himself is no longer free."¹⁸ Draupadi's exemplary questions at the time of crisis punctured the well-cushioned legal and moral framework of the time. The question transmutes to become a moral dilemma because it is for the first time in the history of legal and moral discourses that woman demanded a re-analysis of her rights and her ownership by another human. To Draupadi's credit, the questions she posed were too radical and gave a pragmatic example of what *apad-dharma* (*dharma* at times of crisis) could mean. The question escapes from the realm of a gendered disparity to occupy the worldview of human rights.

It also involves a challenge to Yudhishtira's psychological faculties, repeatedly questioning if he was in his right senses when he staked her. At the very start of the discourse, Vidura, the voice of reason and *dharma* in the text, testifies how Yudhishtira had staked his wife when he was no longer a master of his own sensibilities. Yudhishtira was overcome with a sense of "temporal insanity."¹⁹ Arjuna complicates the matter when he claims that it was not Yudhishtira's self that staked Draupadi. However, as Shalini Shah pinpoints in her "The Making of Womanhood: Gender Relations in the Mahabharata", that

¹⁶ GURCHARAN DAS, *THE DIFFICULTY OF BEING GOOD: ON THE SUBTLE ART OF DHARMA* 41 (Penguin Books India 2009).

¹⁷ *Id.*, 41.

¹⁸ *Id.*, 42

¹⁹ *Id.*, 38

the Chief Queen excels in understanding the intricacies of *dharma* and understands that law as *dharma* is only one of its essential meanings. *Dharma*, more importantly, means the right thing to do, and she uses this interpretation to argue her case. She stands unshaken in the middle of the *Jayant Sabha* (a symbol of modern-day courts) amidst the Kuru men (representatives of the jury) and independently argues her case like a modern-day lawyer.

It is worth noting that after being dragged into the *Jayant Sabha*, the Chief Queen of the Pandavas first takes refuge in law, which describes the relevance of law in the times of the *Mahabharata*. She unfortunately, first appeals to the grand patriarch, Bheeshma, who, as we know, is “used to dealing with matters of state. He looks upon Draupadi’s question as a legal challenge.”²⁰ However, her legal questions remain unsolved through the course of the dicing and the entire narrative thereafter. It is only when the legal frameworks failed to answer her that she further asks if it was fair for Yudhishtira to wager her after he had been reduced to a position of a slave. The question involved an intricate understanding of the rights of a husband who is a slave over his wife and the fundamental rights and position of a woman at a time when the society was deeply hierarchical and functioned on extreme gender polarization. When the entire legal framework fails, she appeals to the morality or *dharma* of those present in the Sabha. She questions, “What is left of the Law of the kings? From of old, we have heard, they do not bring law-minded women in their hall. This ancient eternal Law is lost among the Kauravas of kings?”²¹

Her *prasma*, as David Shulman expounds, almost becomes a riddle or a puzzle which hints at a “baffling, ultimately insoluble crystallization of a conflict articulated along opposing lines of interpretation.”²² This definition of *prasma* can also be ascribed to how legal arguments and discourses are debated and resolved in modern-day legal proceedings. It further hints how the epic’s female protagonist was adept at the legal frameworks and pragmatically employed them to save herself and her husbands from dire situations.

The relevance of the transmutation of her question from a legal to a moral one is substantiated when the text describes the ominous events that follow after the attempted disrobing. With the flouting of the law, one not only defies the moral paradigms but there is an apparent denial of justice to the one who sought it. This further disturbs the mortal and cosmic balance. The text, therefore, confirms its popular stance that *dharma* protected, protects, and *dharma* flouted creates havoc. It is safe to conclude that the *Mahabharata* does not seem to sanction the legal ordinances of the day, and Draupadi’s endless sari

²⁰ *Id.*, 33

²¹ J.A.B. BUITENEN, *MAHABHARATA: BOOK 2: THE BOOK OF THE ASSEMBLY HALL; BOOK 3: THE BOOK OF FOREST 59* (University of Chicago Press 1975).

²² DAVID SHULMAN, *THE YAKSA’S QUESTIONS IN THE WISDOM OF POETS: STUDIES IN TAMIL, TELUGU, AND SANSKRIT 153* (Oxford University Press 2001).

followed by the ominous events is the epic's clear invitation to re-work these legal frameworks.

III. OBSERVATIONS

Very often, we witness law diverging from doing the right thing. The miraculous protection of Draupadi followed by the ominous events stands as a clear warning to all the societies that law devoid of morality will only lead to a complete collapse of order and stability. Therefore, one needs a moral framework to keep the proceedings of law in check. Moreover, instead of analyzing Draupadi's disrobing as a problem of unstable gender relations, one must view it through the lens of human rights, and to do so, it is essential to delve into the understanding of all that defines us as humans.

Morality is a tricky business, but it is also a definite determinant employed for evaluating the righteousness of a person and a situation. Most characters except Vikarna are left dumbfounded and Bheeshma gets away by simply iterating that *dharma* is subtle. "Society nevertheless constantly faces such dilemmas and cannot afford to take a Bhishma-like approach. Even if *dharma* is subtle, legal reasoning and judicial decision-making is evitable."²³

Draupadi, therefore, appeals to the moral righteousness of the *Kuru* men and the fact that she does so after employing tools of the legal frameworks clearly states how the law had proved to be insufficient in its function of smooth governance of a society. It further establishes how moral frameworks occupy a higher position in the value systems of a society and can assist other institutions in their respective functioning. Not only are moral frameworks better tools in the smooth functioning of a society but also a medium that gives meaning and appropriation to other institutions of governance, law being one of them. It is therefore imperative to have a correct understanding of what morality means. Bimal Krishna Matilal, in his essay, "Moral Dilemmas: Insights of Indian Epics", states that "If Draupadi's questions were properly answered, it would have required a 'paradigm shift' in India's social thought. Both legal and social codes were designated by the pervasive term *dharma*, as were the moral principles or moral codes"²⁴

IV. CONCLUSION AND SUGGESTIONS

It is, therefore, safe to conclude that there is no finer episode in the *Mahabharata* than the Dicing to illustrate that law is better understood through the principles of morality. Rahul Singh, questions if "... black letter law

²³ Rahul Singh, *Jurisprudence in and as 'Mahabharata': An Edifying Epic*, NATIONAL LAW SCHOOL OF INDIA REVIEW 172 (Aug. 7, 2023), <https://www.jstor.org/stable/44283797>.

²⁴ BIMAL KRISHNA MATILAL, MORAL DILEMMAS IN THE MAHABHARATA 3 (Motilal Banarsidass Publishers (P) LTD 1989).

arguments are sufficient? Or should the law bother about moral nuances? What is lawful may not necessarily be right and vice versa. In this sense, dharma is akin to “morality” when Natural Law Theory asserts that there is a necessary connection between law and morality”²⁵

Draupadi’s questions also have speculations like; who has the authority and the power to decide the limits and boundaries of law and its frameworks. The divine is not seen as a deciding power because on the day of the gamble and the disrobing, no one appealed to God to solve the subtleties of the stake.

The idea of *dharma* as law creates a debate between legalism and essentialism. While legalism states that *dharma* as law must be followed to its letter, essentialism states that *dharma* must be followed in its spirit. *Dharma* is not what is defined in the law books but all that is motivated and based on love for all beings. All that is opposed to these emotions is *adharmā*. The *Mahabharata* repeatedly states that compassion is the deciding factor in evaluating if an act is *dharmic* and such acts are always a source of delight.

The *Mahabharata* occupies a similar spirit of questioning, inquisitiveness and constant challenges to settled authority as the Natural Law Theory and opposes the postulates of Exclusive Legal Positivism, which believes that “a norm would lose its authoritativeness if it requires norm subjects to decide what the norm is.”²⁶ Natural Law theory is the one that believes in granting agency to human action. In contrast, Exclusive Legal Positivism believes in the authority of law, which had to be followed to its letter. In the latter, there is an obligation of obedience. “The philosophy of *Mahabharata*, like Natural Law Theory, is acutely empowering. It places agency on humans. Unlike the formalist Exclusive Legal Positivism, it does not believe that law has absolute authority and hence there is an obligation to obey law qua law.”²⁷ This idea of placing complete power and choice in the hands of the human leads one to speculate and challenge the multiple divine interventions in the text such as the *Viswaroop* of Krishna in the *Uddyoga Parva*, the *Bhagavad Gita* or the appearance of an infinite piece of clothing that prevented Draupadi’s disrobing in the *Jayant Sabha*. While many scholars consider these as later interpolations by the *Vaishnavite* groups, a better understanding will be to acknowledge that the divine in the *Mahabharata* is not a Calvinistic punishing god but a compassionate being that places the agency in the hands of the actors. Right at the end of the *Gita* and the narration of the *Kausaika Episode*, Krishna leaves Arjuna to decide the course of action he wishes to avail. Even as an emissary in the *Uddyoga Parva*, the final call is left on Duryodhana and company.

²⁵ Singh, *supra* note 23, 171-172.

²⁶ Singh, *supra* note 23, 172.

²⁷ Singh, *supra* note 23, 172.

The possibility of his divinity brings in the idea of free will and choice with many resemblances to the Christian notion of free will. He grants each character the will to act on their accord. Therefore, he can only propose a peace treaty to the Kauravas and not force them to accept it. It's Duryodhana's free will to reject the proposal and bear the consequences of his decisions. Every character undergoes the process of making choices cautiously or incautiously. Arjuna's putting down the bow, Yudhishtira's gamble, the popular lie in undertones on Ashwathamma's killing, the killing of Abhimanyu and Karna. Every character carries the baggage of their choices and subsequent actions.

There is agency granted to men in the *Mahabharata*, but the agency is critical and heavily loaded with decision-making capabilities. Many characters in the text are unable to exhibit these decision-making abilities.

There is, therefore, an undeniable intervention between the *Mahabharata* and the tenets of law through the medium of Natural Law Theory. Therefore, the role of Jurisprudence in the *Mahabharata* is to evaluate how to decide between the lesser of the two evils which also grants a poetic justification to the victory of the Pandavas, an idea that Prof. H.L.A. Hart also speaks of in the Hart- Fuller discourse. He expounds that the choice of the lesser evil should be made in a conflicting situation, and such an implementation of choice would be sanctioned and serve its merit. The lessons and teachings of the *Mahabharata* are, therefore, ubiquitous. Similarly, the intention of the *Mahabharata* is also not to "settle the disputes of dharma"²⁸ or to resolve the legal complexities but to simply catalogue it. Therefore, the Mahabharata is not a "how-to" book²⁹ but, as A.K. Ramanujan observes, a text that analyzes the moral complexities and the subtle ways of *dharma* in every action.

²⁸ Rahul Singh, *Jurisprudence in and as 'Mahabharata': An Edifying Epic*, NATIONAL LAW SCHOOL OF INDIA REVIEW at 172 (Aug. 7, 2023). <https://www.jstor.org/stable/44283797> (last visited on March 22, 2023).

²⁹ GURCHARAN DAS, *THE DIFFICULTY OF BEING GOOD: ON THE SUBTLE ART OF DHARMA* 293 (Penguin Books India 2009).