

## CHAPTER IV

### D I V Y A M Ā T R K Ā

In this chapter we shall discuss the general rules regarding the ordeal. These are studied under following heads :-

- 1.. Conditions necessary for undertaking an ordeal.
- 2.. Persons entitled to undergo the trial.
- 3.. What ordeal? : rules for selecting a proper ordeal -  
consideration of ordeal from the point  
of view of (a) the seriousness of the  
charges (b) the time or the suitability  
of the season (c) the place of conducting  
the trial.
- 4.. The cases for which the ordeals are used.
- 5.. Ordeal as a method : (i) ordeal, a means to an end.  
(ii) retrial. (iii) no ordeal against any  
other ordeal (iv) the general procedure.  
(v) social beliefs or the public opinion.
- 6.. Judgment derived from the ordeal.
- 7.. Divination in the Dh.ordeals.
- 8.. Stages of the development of the Dh.ordeals.

#### 1..Conditions necessary for undertaking an ordeal :

(A) Discussing the evidential value of the ordeal we have seen that the ordeal was never selected as a means of proof when any of the human proof was available. Naturally, this was the basic condition for resorting to an ordeal.<sup>97</sup>

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97. Yāj.II.22.

(B) Another important condition that is necessary for a trial by an ordeal is to achieve a guarantee or a bond(*Śīrṣaka*) from the plaintiff(*abhiyoktr*) - the person who insists that the accused person should undergo the ordeal.<sup>98</sup>

The word *Śīrṣakastha* is explained by Mit. as *Śīrṣake Tiṣṭhatīti Śīrṣakasthaḥ*. The word *Śīrṣa* denotes the last stage of the judicial procedure which declares the judgment resulting into the award of the punishment for the party defeated. *Śīrṣakastha* is therefore a person who is due for such punishment.<sup>99</sup>

*Avastambha* also means same as *Śīrṣakastha*.<sup>100</sup>

If the person undergoing the trial comes out successful, it only proves that the person insisting upon his undergoing the trial, the accuser, is at wrong and is defeated. Under the rule of *Śīrṣaka*, the accuser is thus punishable if the accused undergoes the trial successfully. The accuser should give a declaration to the effect that he would undergo the punishment awarded in such a case.<sup>101</sup>

98. Yāj. II.95.

99. शीर्षकं शिरः। अवष्टम्भारस्य चतुर्थं पादो जयपराजयलक्षणस्तेन च दण्डो दृश्यते, लक्ष्यते । तत्र तिष्ठतीति शीर्षकस्थः । तत्प्रयुक्तदण्डभागित्यर्थः ।

Mit. on Yāj. II.95

100 (i) यत्राभियोक्ताऽहमस्थापराधं जानामीति शीर्षकस्थो भवति स सावष्टम्भाभियोगः

Subodhina on Mit. (Yāj. II.95)

(ii) अवष्टम्भोऽत्र निश्चयः शिरोवर्तिता । D. T. p. 579.

101. अभियुक्तस्य दिव्यतो दोषाभावेऽहं दोषवान् दोषानुरूपस्य दण्डस्य दातेत्यभ्युपगम इति शीर्षम् । तदेव शीर्षकम् । Apar. on Yāj. II.95.

The Śīrṣaka thus curbs a tendency on the part of the accuser to make false allegations or insist wrongfully on a particular person's undergoing the trial.

According to Viśvarūpa, the accuser should offer to pay requisite money or the whole of his wealth or be prepared to part with any of his limb or even the head in this bond.<sup>102</sup>

SC points out that there can be provision of any sort of punishment in the Śīrṣaka - either physical or in form of some fine. The digest points out that Śīrṣaka is advisable from the accuser's point of view also, since it would help him in proving or substantiating his own case in the litigation.<sup>103</sup>

Following are however the cases of exception i.e. the ordeal may be resorted to in these cases even without a Śīrṣaka.

(1) Grave charges (such as adultery, grave sins etc) or the cases in which many persons collectively put any charge on anybody or when the person himself is interested in self-acquittance.<sup>104</sup>

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102. यथाभियुक्तोऽर्थोऽन्यथा स्यात् ततो ममेदं धनं सर्वस्वं वा यदा इदमङ्गं शिरौ वा गच्छेदित्येवमवष्टम्भेन दिव्यक्रियाप्रयोक्ता शिरौवर्तीत्युच्यते।

Viś. on Yājñ. II. 96.

103. एतस्य जयेऽहमित्यं दण्ड्य इति शरीरदण्डमर्थदण्डं वा मिथ्याभियोगिनौ विहितमभियोक्ता स्वकृताभियोगदार्ढ्यख्यापनायाङ्गीकुरुते। SC p 224.

104. KP, 1-3

(ii) When the king orders his own servants to undergo the ordeal or when the king himself suspects the guilt of a person (according to Nār. read by VM).<sup>105</sup>

(iii) When the person is accused by some public scandal.<sup>106</sup>

(iv) When persons are pointed out as the members of a gang of thieves, by some thieves.<sup>107</sup>

(v) Kosa ordeal which is in general recommended for the self-purification of a person, can be resorted to without Śīrṣaka.<sup>108</sup> Because of this special concession accorded to the kosa ordeal, Kāt. is found recommending strict punishment for the accuser, if the accused person successfully undergoes the Kosa in which śīrṣaka is assured by the former.<sup>109</sup>

SC gives an important rule, i.e. the condition of sirsaka is only to be observed when the ordeal is to be conducted in the court of the king or the Prādvivāka. In other court, śīrṣaka is not necessary even if the cases are to be tried for grave charges.<sup>110</sup>

(C) Besides the condition of śīrṣaka, it is necessary to see that both the parties agree to decide the dispute by an ordeal. Any ordeal can be resorted to only after obtaining such a consent from the litigating parties.<sup>111</sup>

105. Nār.270.

106. Kāt.413.

107. चौरयत्नामस्माकमेते संध्यातिन इत्येवं दस्युभिर्निर्दिष्टानां  
दिव्यमक्षिरः। Apar. on Yāj. II.96

108. Pit.5.

109. Kāt.454.

110. महात्वाद्योगेष्वपि राजप्राद्विवकेतरसभायां तु न दिव्यपञ्चके  
क्षिरः कल्पनमस्ति। SC p 226.

111. Nār.258.

### Onus of the proof :

In the previous chapter we have seen the general rules regarding the onus of the proof. In case of an ordeal, the general rule is that the defendant is required to prove his innocence by undergoing the trial. Experts of ordeal should thus conduct the trial on the defendant(abhiyukta) and not on the plaintiff(abhiyoktā) points out Kāt.<sup>112</sup> Another important provision for the trial by an ordeal is that either of the party can willfully offer to undergo the trial, only condition being that the other party should assure the śīrṣaka.<sup>113</sup> This is possible, points out Māt. because of the fact that the other proofs (the human proofs) can prove only the positive side of the charge. There are therefore fixed rules regarding the discharging of the onus of the proof. The ordeal can prove the positive as well as the disprove the negative side of the proposition.<sup>114</sup> Secondly, the ordeal is never forced on anybody. It is always undertaken willfully. The defendant can thus refute the charges made by the plaintiff and prove his innocence by undergoing the ordeal, or, the plaintiff may, by resorting to an ordeal, prove that the charges made by him are not false.

According to Kāt., certain people are not eligible to undergo the ordeal. These persons could therefore appoint representatives for undergoing the trial.<sup>115</sup>

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112. Kāt. 411.

113. Yāj. II.96.

114. Vide f.n.93.

115. Kāt.430

(2) Persons entitled to undergo the ordeal (Divyādhikārī):

Dh.writers point out that one should choose a proper ordeal and conduct it according to the prescribed rules. For the selection of a particular ordeal one has to take into consideration the suitability of place and time, the seriousness of the offence committed and the abilities of the person who is to undergo the trial. The appropriateness of an ordeal should thus be decided on the basis of the caste, sex, age and the general condition of the person undergoing the trial. Social status of the person is also an important point to be considered in deciding the ordeal. These may be discussed as follows :-

(a) Consideration of the ordeal from the caste point of view :-

The ancient Indian society was mainly organised on the basis of the theory of castes. The four castes (Brahmin, Kṣatriya, Vaiśya and Śūdra) are mainly based on the ethical standards and the way of life adopted by the individuals and have played a great role in maintaining the great cultural and ethical standards of the society. The theory of castes which is the very back bone of the Indian society had thus a very vital influence on the law-making. The ancient law-makers however viewed the respective castes from the point of view of the great heritage and ethical standards they were supposed to maintain.

The ordeal was, no doubt, a very helpful means towards practical justice. In the legal context, however, it could hardly be used as a convincing proof unless one viewed at it as a

method of challenging man's inner conscience for telling the truth against the supposed divine intervention. It required a peculiar psychological set-up of the person undergoing it and could be valued best only in its restricted use. The Indian law-makers utilised the philosophy of castes for a double purpose, for dignifying the value of the ordeal as a means of truth-telling on one hand and for restricting its wide-spread use on the other.

A Brahmin, the preceptor and the preserver of the Vedic lores, must speak the truth. Is it necessary to ask him to tell the truth? He should only be asked to tell and whatever he tells must be the truth. Manu therefore says 'A Brahmin should be asked to tell, a Ksatriya should be asked to tell the truth, a Vaisya should be asked to tell the truth for all his wealth (i.e. cow, corn and gold) and a Sūdra for all his deeds.'<sup>116</sup>

With these standards, thus, it was a degrading affair, if a Brahmin was asked to, or required to, prove his truth through some external means - say an oath. Gautama therefore pointed out that a Brahmin should not be asked to undertake an oath.<sup>117</sup>

But, similar to the evolution of the three grades of the Vedic seers referred to by the Niruktakāra,<sup>118</sup> we find here a great social process resulting into an over-all degradation from the expected high standards.

<sup>116</sup> ब्रूहीति ब्राह्मणं पृच्छेत्सत्यं ब्रूहीति पार्थिवम् । गोबीजकाञ्चनेर्वैश्यं शूद्रं सर्वेस्तु पातकैः ॥

Manu, 8-88

<sup>117</sup> शपथेनैके सत्यकर्म । तद्देवराजब्राह्मणसंसदि स्थादब्राह्मणानाम् । GDS 13-13-14.

<sup>118</sup> साक्षात्कृतधर्माणिः ऋषयो बभूवुः । तेष्वरेभ्योऽसाक्षात्कृतधर्मिभ्यः उपदेशेन मन्त्रान्संप्रादुः । उपदेशाय गृह्यन्तोऽवरे विद्वन्गृह्यायेमं ग्रन्थं सगाम्नासिषुर्वदं वेदाङ्गानि च । Nirukta I-6-5.

Next provision therefore is, 'A Brahmin should swear by his truth, a Kṣatriya by his vehicle or weapon, a Vaiśya by his wealth and Śūdra by his deeds.'<sup>119</sup>

Thus we find, that a Brahmin, who was not required to prove his truth through external means (like oath etc.) and was thus exempted from taking an oath - is now asked here to take an oath of truth.

In due course, we find that Viṣṇu recommends mild ordeal for a Brahmin for a serious kind of allegation. A Brahmin may thus undergo Tulā. Viṣa, however, should not be given to him, he points out.<sup>120</sup> Following distribution of ordeals on the basis of castes was consequently made by Yāj. Tulā for Brahmin, Agni or Jala for a (non-) Śūdra and Viṣa of seven Yavas' quantity for a Śūdra.<sup>121</sup>

Nār., Kāt., Pit., and other minor Smṛtikāras made the above details more specific i.e. (i) Tulā for Brahmin (ii) Agni for Kṣatriya (iii) Jala for Vaiśya and (iv) Viṣa for Śūdra, with a special rule that Viṣa should not be given to the Brahmin.<sup>122</sup>

On the basis of these details, Viśvarūpa, the commentator of the Yājñavalkya-Smṛti, interpreted the Yāj. stanza quoted above with following options :-

119. Manu, 8.113

120. Viṣṇu, IX.23,27

121. Yāj. II.98

122. Kāt.422, Nār.334-35, Pit.9.



(i) Vyavasthitavikalpa should be resorted to : we should thus get Tulā for Brahmin, Agni for Kṣatriya, Jalā for Vaiśya and Viṣa of 7 yavas' quantity or Jala or Agni for a Sūdra.

(ii) Option to select any of Agni or Jala or Viṣa in the cases of Kṣatriya and Vaiśya while, Viṣa is made compulsory for the Sūdra.<sup>123</sup>

We thus find that milder ordeals are recommended to the persons of higher castes and severe ones to those of inferior ones,<sup>124</sup> but as we have seen above, the Dh.writers are not really to be blamed as being partial for this sort of parity, because it has crept in, rather helplessly, out of an attempt to maintain the higher ethical standard of the society.

Any way, once a person is due for a trial, this sort of classification or distinction between individuals on the basis of castes was rather unjust.

The Dh.writers realised this soon. Kāt. and others thus introduced the theory of every ordeal for everybody.<sup>125</sup> They discouraged the classification of ordeals on the basis of castes. This will be clear from the following points :-

(i) It is interesting to see that the castewise classification is available only with reference to the original five

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123 व्यवस्थितविकल्पश्चायम् । क्षत्रियस्याग्निः, वैश्यस्य च जलं, शूद्रस्य तु यवाः सप्त विषस्य वा जलं वा अग्निर्वैत्यर्थः । यदा अग्निर्जलं वाऽशूद्रस्य क्षत्रियादि-जातस्येत्यर्थः । ततश्च क्षत्रियादीनामभ्यादिष्विच्छाविकल्पः । Viṣ on Yaj. II.98

124 सर्वत्रोत्कृष्टपुरुषस्य उत्तुप्रत्ययो भवति । अपकृष्टस्य तु गुरुप्रत्ययो भवति इति व्यवस्था द्रष्टव्या । VN p.204

125 Kāt. 422.

ordeals described by the old writers. Subsequent ordeals added to these five by the later writers are not found classified on the basis of the caste. On the contrary these writers advocated the theory of every ordeal for everybody.

(ii) An ordeal is employed in accordance with the seriousness of the crime which is decided by the old writers like Viṣṇu on the basis of (a) The value of the offence in terms of gold and (b) The caste of the person. Now, explaining these rules, the later writers drop the caste-wise classification as far as the seriousness of an offence is to be considered, and recommend three grades of persons i.e. Uttama (Higher grade), Madhyama (Middle grade) and Nīkṛṣṭa (Lower grade), based on the conduct of the person.<sup>126</sup> Explaining the Yāj. stanza, Aparārka therefore points out that accepting the view that every ordeal is applicable to everybody, one should interpret the castes according to the merits of the person.<sup>127</sup>

It will be thus clear that the later writers did not encourage the caste-wise classification of ordeals. They were however handicapped in one respect. As the writers of Śāstric works they had to follow the canons of the Śāstra which attached highest importance to the tradition and the technical set-up. As such, they did continue the traditional information of the caste-wise classification of ordeals in their works. We thus find that a Kāt. who established the new theory

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126. एतच्चरिनादितो मध्यमपुरुषा भवन्ति । SC p 237

127. सर्वेषां वर्णानामव्यवस्थायां सर्वदिव्यकरणपक्षमाश्रित्य गुणवत्तारतम्येनैषा संख्याव्यवस्थोक्ता वेदितव्या । Apar. on Yāj. II.99

of every ordeal for everybody has also given the traditional caste-wise classification.<sup>128</sup>

It must however be observed that the caste-wise classification was helpful, in a way, in restricting the free use of ordeal with dignified limitations.

The Dh. writers expected that a Brahmin should not be required to prove his truth through external means. It thus becomes a degrading affair for him if he is required to undergo an ordeal. A person of status, particularly the religious status, would not thus prefer to undergo an ordeal. There was thus a self-made restriction imposed by a person of high order on the use of ordeal.<sup>129</sup> If the dignitaries of the society also indulged in use of ordeals, it would initiate the commoner to make a very free use of the method. But the fact that the dignitaries tried to keep themselves away from the ordeal helped in its own way in maintaining a whole-some check over the free use of ordeal.

Consideration of ordeals from the caste point of view was originally conceived with the idea of making good use of this valuable means by relating it with the moral standards of the society, but when the castes had come to be merely formal,

128. Kāt. 422.

129. It is interesting to see that this notion was prominent during the Maratha period. Cf. the dispute regarding the Dharmādhikārī-rights between two learned priests at Pravara Sangam referred to in Chapter VII.

decided on the basis of the birth of the person, there was no rational ground to make distinction between person and persons. The question was thus required to be considered on a different footing.

Kāt. who started rethinking in this direction pointed out that many Dvijas - persons born of higher castes - such as cow-hards, traders, artisans, bards, domestic servants and usurers (Vārdhusika) should be considered as Sūdras as far as trial by ordeal is concerned.<sup>130</sup> Viṣa is denied for a Brahmin of a very high order only (Dvijottame). He thus introduced a new principle for the use of the ordeal i.e. every ordeal for everybody.

(b) Unhealthy elements in the society :-

Just as the higher dignitaries of the society were expected to remain away from a direct involvement in the trial, so also, it was necessary to see that the ordeal did not go in the hands of the unhealthy elements of the society. In wrong hands, there was every possibility of the ordeal being misused. The later writers are found complaining with greater concern against the possibility of the people resorting to the deceptions or frauds (Kuhaka) in these trials. Kāt., therefore, preferred to disallow certain people from undergoing such trials. 'No ordeal should be performed by those charged with the murder of mother, father, brahmin, teacher, minor, woman or king; those who are athiests, who wear by particular sect-marks, great rogues,

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130. Kāt. 423.

experts in incantations and yoga, who are the progenies ~~and~~ of the unions of the persons of different castes and those who are repeatedly engaged in sins, persons engaged in greater sins, (Brahmahatyā, Steya, Adultery etc.) athiests and the persons engaged in sinful acts as such, should never be recommended by the king for a trial by ordeal.<sup>131</sup>

Obviously, the idea behind this prohibition appears to be of saving the ordeal from going into wrong hands. But, that does not mean, points out SC, that the cases of the persons referred to here should not be investigated by an ordeal at all. In fact, Kāt. himself wants that the ordeal must be undergone by the gentle persons. He says that the persons who are prohibited to undergo ordeal should appoint gentle persons for undergoing it.<sup>131A</sup> SC points out that this rule is applicable when the relatives of such persons are not available.<sup>132</sup> Any way, this whole section makes provision for the appointment of a representative for undergoing the trial in the cases of the persons who are prohibited for the same, points out VP.<sup>133</sup>

(c) Suitability of the ordeal for a particular society:-

The ordeal is after all a social custom which can influence the people who believe in it. Indian society-based on the principle of four castes and believing in the Vedic traditions - was gradually growing complex developing into various sorts of people having their own sects and cultural traditions.

131. Kāt. 427-29.

131A. Kāt. 430.

132. तत्तैर्नियुक्तस्वजनाकाभविषयमित्यवगन्तव्यम् । SC p 242.

133. प्रतिनिधिद्वारा एतैर्दिव्यं करणीयमिति द्रष्टव्यमुभाह । VP p 180

It was not possible to satisfy these people with the traditional Dharmasāstra methods. Kāt. therefore provides that such people should not be tried with these methods. These persons should be dealt with the methods popularly believed by them. 'When untouchables, men of lowest castes, slaves, mlecchas, and those born of mixed unions in the reverse order of the castes are guilty of crimes, the determination of their crime should not be made by the king (in his court by the traditional methods). He should indicate such ordeals as are in vogue among them.'<sup>134</sup>

DT explains that the ordeals well known among these people are those of snake in the jar and alike.<sup>135</sup>

As regards to the ordeals to be practised by the persons born of the unions of mixed castes, VN refers to the arrangement prescribed by the older writers according to which, ordeals popular with the people of the mother's side should be used for the person born of the couple married according to the Anuloma marriage, while those popular with the father's side should be followed for the person born of the parents married according to the Pratiloma system.<sup>136</sup>

(d) Personal ability of the individual undergoing the trial :-

Having thus analysed the suitability of an ordeal in a greater context of the social environment of the person, we

134. Kāt.433.

135. तत्तत्प्रसिद्धानि सर्पधरादीनि । DT p. 579.

136. पूर्वाचार्या एवमत्र व्यवस्थां कुर्वन्ति, मातृजातितुल्यमनुलोमानां दिव्यम्, पितृजातितुल्यं प्रातिलोमानामिति । VN p. 210

find that the Dh.writers have considered the problem of the victimisation of an individual in an ordeal and have rather given a very practical solution to it by recommending only suitable ordeal to the suitable person.

The ordeal must be selected on the basis of the strength of the person which may be either of the kind of the physical endurance required for undergoing the trial or of that of the psychological set-up of the person. As a divine method of investigation, the ordeal has a vital influence on the religious-minded person. The Smṛtisāra therefore points out that the ordeal must be selected on the basis of the religious strength of the person. It is not possible that a person of high religious belief, devoted to god, offering daily worships in accordance with his family traditions, would just lie for a trifling matter. The religious strength of the person should therefore be taken into consideration in selecting the ordeal, the digest opines.<sup>137</sup>

The physical endurance required for undergoing a particular ordeal is of course an important factor considered by the Dh.writers. The success of the water ordeal, for example, depends upon one's ability to control the breath. It may not therefore be a suitable test for the person who is suffering from the breathing trouble. On the contrary, it may not be an ordeal at all for the person who gains subsistence from water and is habituated to dive deep in water such as a fisherman or a diver.

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137. अभियुक्तस्य धर्मानुष्ठादिकृतं बलवत्त्वा बलवत्त्वमपेक्षानुरूपं दिव्यं रातव्यम् । न हि संभवति-अल्पवस्तुनिमित्तं पुण्यकाले कुलधर्मार्थादियुक्तम् असत्यमपि वदति । तेन तस्य तदनुरूपमेव दिव्यम् ।

Smṛtisāra quoted by DKP 449

The water ordeal would thus prove unsuitable in both the cases. Blacksmiths are habituated to work in severe heat and remain in direct contact of fire. The fire ordeal would therefore be a meaningless test for these persons. Poison is not favourable to the health of the person suffering from leprosy or other skin diseases. A person knowing Mantra and Yoga can on the contrary nullify the effect of the poison by means of various antidotes. The rice ordeal would be unsuitable for the person who is suffering from the diseases of the mouth, or one who has taken a vow of not eating rice. The Kosa ordeal which can influence only the god-believing person, cannot be effective in the case of an atheist. We thus find that these ordeals are recommended only for the persons who are capable of undergoing them and are denied to the unsuitable ones.

Various types of persons referred to by the Dh.writers either as suitable or unsuitable for a particular ordeal can be analysed into following groups :

A..Physical health of the person

(i) Healthy -

1. Strong(Balin),

(ii) Healthy but without any endurance-

2 Woman(Strī), 3 Minor (Bāla), 4 Old person(Vṛddha)  
5 Weak (Durbala), 6 A lean person (Kṛśāṅga)  
7 Not capable (Asamartha).

(iii) Unhealthy -

(a) Disabled

8 Blind(Andha), 9 Lame(Paṅgu), 10 Impotent (Klība)  
11 Infirm (Vikalendriya).

(b) Having some disease

12 Person suffering from bile(Pittarogin), 13 White leprosy(Śvītrī), 14 Leprosy (Kunakha), 15 Lucoderma (Kuṣṭha), 16 Breathing trouble (Śvāsakāsin), 17



17 Cough and bile(Pittas<sup>5</sup>lavat), 18 Disease of the mouth (mukharogin), 19 diseased in general(Ātura or Rogī or Vyādhita).

**B Psychological condition of the person :**

**(i) Persons with ~~any~~ peculiar kind of mental attitude -**

20 a person full of miseries (Ārta or Bhṛsārta), 21 Un-energetic (Nirutsāha), 22 fool(Mūrkhā), 23 a person afflicted by various diseases(Vyādhikliṣṭa), 24. a person turned non-religious(Nirdharma), 25 a person afflicted by various sorts of difficulties and miseries(Paritāpār-dita), 26 a person without any courage(Sattvahiṇa).

**(ii) Persons with particular kind of nature -**

27 Timid(Bhīru), 28 Greedy(Lubdha), 29 Wicked(Duṣṭa), 30 Despised or contemptible(Kutsita), 31 Ungrateful (Kṛtaghna), 32 Rogue(Prasāṭha), 33 Cheat(Kitava), 34 Athiest (Nāstika), 35 God-fearing(Sasūka).

**C Profession of (or a particular way of life adopted by) the person**

36 Blacksmith(Lohaśilpin), 37 a diver or a fisherman (Ambusevin), 38 person knowing incantations and yoga practi-ces (Mantrayogakriyāvid), 39 an ascetic(tapasvin), 40 a person who has observed vow (Savṛata), 41 a person who wears marks particular to his sects or a Brahmācārin(Liṅgin), 42 A Vrātya, 43 Gochāra(Farmer).

**D Persons having various habits -**

44 a drunkard(Madyapa), 45 a person addicted to woman (Strīvyasanin), 46 a person engaged in evil acts(Kukarmaṇi-rata), 47 Engaged in sinful acts(Pāpābhyāsarata), 48 a great sinner (Mahāpātakin).

(E) Social position of the person -

49 Poor(Alpadravya), 50 Beggar(Nirdhana), 51 person not having son(Aputra), 52 A person born of mixed unions(Varnasaṅkarajāta), 53 Untouchable(Asprśya), 54 Born of low caste(Adhama), 55 Slave(Dāsa), 56 Mleccha, 57 person born of the union in the reverse order of caste(Prātilomyaprasūta).

Commentators have explained some of these words which shows how they were taken with their defined legal accuracy. e.g. Strī means a woman in general-irrespective of her caste, age or individual position, Bāla means a boy i.e. below sixteen-irrespective of his caste; Vrddha is the person below eighty (this means that a person beyond eighty was not considered for ordeal) and so on.<sup>138</sup>

The following table would show for which particular ordeal these persons were either recommended or not recommended.

ORDEALS	RECOMMENDED	NOT-RECOMMENDED
1. Tulā	2,3,4,7,8,9,10,11,19, 25	NIL
2. Agni	1	7,8,13,14,15,36
3. Jala	1	16,17,19,21,23,27 37
4. Viṣa	1	2,3,4,12,15,17,19,38
5. Kośa	35	24,31,34,42,44,45,55
6. Tandula	NIL	18,40
7. Taptamaṣa	NIL	NIL
8. Phāla	43	NIL
9. Dharmādharmau	NIL	NIL

138. स्त्री स्त्रीमात्रं जातिवयोवस्थाविशेषानादरेण, बाल आर्षोऽशाद्वर्षाज्जातिविशेषानादरेण, वृद्धोऽशीतिकावरः। Mit. on Yājñ. II.98

Following observations should be made as regards to these rules. :-

- (1) Tulā is in general made available to all. There is therefore no question for its not recommending to anybody. Cases in which it could be specially recommended are noted in the column 'recommended'.
- (ii) Agni, Jala and Viṣa are, on health grounds, not suitable to certain persons. These are referred to in the column not recommended. For the rest, they are applicable. These ordeals are particularly meant for the strong persons. Nār. has in general denied ordeals in the cases of the persons referred to in 2, 1920, 39 and 40.<sup>139</sup> According to Asahāya, though no specific ordeal has been mentioned here by the writer, we can learn from the immediate context that it is the fire ordeal that is denied here.<sup>140</sup> According to SC however, the denial here refers to the Agni, Jala and Viṣa.<sup>141</sup> Anyway, if we drop the persons for whom these ordeals are not considered fit on health ground, they are applicable to all those who are capable of undergoing them. Tanḍula is similarly denied only to those who cannot undergo it. Kosa is also similarly denied only to those to whom it is temperamentally not suitable. The rest of the ordeals are freely available to all since they are not denied to anybody. It will be thus clear that the

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139. Nārada 256.

140. यद्यपि दिव्यशब्देन सर्वदिव्यमुच्यते, तथाप्यत्रानन्तरौक्ताविधिप्रातिषेध इति... तेषामग्नेदिभ्यमेव निषिध्यम्। Asahāya quoted by DKP 452.

141. एतद्व्यम्बुविषयम्।... एवं च क्लीबादीनामव्यम्बुविषयर्थाति दिव्यानि भवन्तीत्यनुसंधेयम्। SC p. 239

Dh.writers have mainly considered the availability of the ordeal rather than its non-availability. They have seen that suitable ordeals are recommended to suitable persons only.

It may be pointed out that the ancient law makers in India have accorded many legal, fiscal or penal privileges to the infants, aged, diseased, distressed and helpless. 'It is evident from the rules that a general protection was extended by the state to infant and helpless persons as long as they were not capable of transacting legal business. They received a legal guardian in the person of the king....

... In the case of the ordeal, however, the reason for according these persons special privileges was not of granting special protection but due to understanding that these persons were unable to endure difficult ordeals. It was understood that these persons would perish immediately, for instance, after diving in case of an ordeal by water. The Dharmasāstras having thus in mind the feebleness of the person to whom they usually accorded special privileges stated that if these persons, if not completely exempt from ordeals should be at least submitted to such an ordeal in which their feebleness was not a handicap, that is, to the ordeal by balance which consisted in double weighing, before and after exhortations.<sup>142</sup> We thus find a spirit of tolerance, kindness and concern for the weakness of mankind. The Dh.writers should thus be credited for giving a very practical solution to the problem of victimisation of an individual in an ordeal without belittling the utility or importance of the method.

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142. L.Sternbach : 'Juridical Studies in ancient Indian Law'  
pp.324,335

(3) Rules for selecting a proper ordeal :

The Dh.writers insist upon selecting a proper ordeal and executing it according to the recommended procedure. If this is not done, the ordeal may fail in achieving the desired goal, they point out. Need for selecting the proper ordeal becomes prominent with its development in the legal sphere. Nār., Kāt., Br., and Pit who have tried to develop law in all its technicalities, have naturally developed the ordeal also in its legal details.

As regards to the selection of an ordeal, Nār. says that the selection must be made on the basis of the strength of place and time.<sup>143</sup> (Desakālabalāpekṣam - Etacca desakālabalāpekṣam kuryāt; yādṛśam desakālayorbalam vibhāvyaate tadbalāpekṣam sādhanam kuryāt-Asahāya). The Smṛtisāra reads the stanza as Arthakālabalāpekṣam and takes Artha (seriousness of the charges or the magnanimity of the purpose), Kāla (auspiciousness or inauspiciousness of the time) and Bala (the religious strength of the persons undergoing the trial) as three independent factors necessary to be considered for selecting the ordeal.<sup>144</sup>

Thus, if we summarise, following are the factors considered for the selection of an ordeal :- (i) Personal ability of the person undergoing the trial. (ii) Seriousness of the charge (iii) The time and (iv) The place of conducting the trial. As we have already discussed the first point in our discussion

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143. Nār. 239

144. स-च । निर्णयौर्ध्वकालबलापेक्षया करणीयः । अथस्थ विवादाविषयस्य परिमाणबहुत्वात्पक्षं कालस्य च पुण्यापुण्यत्वमाभीयुक्तस्य धर्मानुक्रादिकृतं बलवत्त्वबलवत्त्वमपेक्षयानुरूपं दिव्यं रातव्यम् ।

Smṛtisāra quoted by DK p 449.

regarding Divyādhikārī (person entitled to undergo the trial) we shall discuss here the remaining points in due order.

(A) Consideration of the ordeal from the point of view of  
The seriousness of the charges.

The ordeal could be utilised with advantage in the disputes in which no human proof was available. These were generally the cases of Rājadroha (Treason) and Sāhasa (Heinous action) in which attempts were often made by the culprits to destroy all possible evidence. A king was therefore advised to make a free use of ordeal in all such cases. He could select any ordeal considered proper by him for the purpose.

In the cases such as the repayment of debts (Rṇādānam) or deposits (Nikṣepa) or theft (steḥya), however, the king was asked to recommend only the suitable ordeal which could be decided on the basis of the seriousness of an offence to be calculated in terms of money.<sup>145</sup>

We thus find various ordeals classified in due order in accordance with the seriousness of the offence.

VIṢṆU

Viṣṇu points out that the value of an offence must be measured in gold. He gives us a table indicating the value for which the following methods are applicable.

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145. Viṣṇu IX 2-3.

Dūrvākara...	for less than or upto	1	Kṛṣṇala.
Tilakara...	- do -	2	Kṛṣṇalas.
Rajatakara	- do -	3	-do-
Suvarṇakara	- do -	4	-do-
Sīroddhṛtamahīkara-	do -	5	-do-
Kośa	- do -	$\frac{1}{2}$	Suvarṇa.

And beyond this, any offence of a higher value should deservingly be tried by any of the methods such as Dhātā, Agni Udaka and Viṣa.<sup>146</sup>

It must be observed that Viṣṇu does not give the respective value for which each of the higher method could be used. Vivāda-candra points out that the minimum value required for any of these methods should be half a Suvarṇa.<sup>147</sup>

An important point referred to by Viṣṇu with regards to the valuation of an offence is that such valuation must be made on the basis of (i) the money involved and (ii) the qualities or the caste of the person undergoing the trial. If the person is the repeater of the offence (Prāgdr̥ṣṭadoṣa) his act would naturally be treated as more serious.<sup>148</sup> As regards to the caste of the person, Viṣṇu points out that the values given in the above table are with reference to a Sūdra; in the cases of Vaiśya, Kṣatriya and Brahmin the given amount should respectively be doubled, trebled or made four times.<sup>149</sup>

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146. Viṣṇu. IX 4-11.

147. ततः परं । केचिन्मन्यून सुवर्णां धृतिरस्मिन् ।

Vivādacandra quoted by DKp 431.

148. Viṣṇu IX.18

149. Viṣṇu IX.12-14.

YĀJÑAVALKYA

Yāj. points out that Phāla, Viśa and Tulā should not be tried for the offences valued to be less than 1000 Paṇas.<sup>150</sup>  
<sup>151</sup>  
 The Mit. advises us to include the Jala also in the list. Thus, out of five ordeals given by Yāj. Kośa is recommended for an offence below 1000 Paṇas, and the remaining four above it. Obviously, this can be taken as a line of demarkation between the oaths and the ordeals in general, since, Kośa is in fact an oath deemed to be an ordeal.

We have seen above that Viṣṇu has only graded various oaths according to their respective value. He has however not indicated similar grades of the ordeals. Yāj. has also practically done the same. He has only distinguished Kośa from others but has not indicated the respective value of each of the ordeal given by him.

In this respect, Nār. also does not go beyond Yāj. On the contrary, it appears that he has avoided to discuss this aspect of the ordeal. Selection of an ordeal according to him must be made on the basis of the strength of place and time. [Desākālabalāpekṣam- we have already referred to the variant reading - Arthakālabalāpekṣam. It may be observed that Desākāla-0 appears to be the original reading for the following reasons- Nār. does not really discuss the Artha aspect of the ordeal. Asahāya, the commentator of Nārada-Smṛti accepts that reading].

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150. Yāj. II.99

151. पणसहरनादवक्त्वा फालं विषं तुलां वा न कारयेत् । मध्यवर्ति जलमापि ।  
 Mit. on Yāj. II-99



The Artha aspect appears to have got prominence in the later Smrtis. We find that Kāt. and Br. have particularly stressed this aspect.

#### KATYĀYANA

All sort of money should be converted into gold. Suitable ordeal should be tried only after valuing the offence in terms of gold. Viṣa should be tried for the loss of 100(Suvarṇas), Agni for 80, Jala for 60, Dhātā for 40, Kośa for 30(or 20 or 10 or for more than half of it i.e.6) Taṇḍula for 1/4th of it. (i.e.1½ Suvarṇa), methods like touching the head of Son etc. for 1/4th of it(i.e. for a half Suvarṇa less by 1/8th part of it i.e. approx. 30 Kṛṣṇālas) and other popular methods for 1/4th of it.(i.e. Seven and a half Kṛṣṇālas).<sup>152</sup>

#### BRHASPATI

A king, with a desire to know the truth or the falsehood, should give ordeals as per recommended procedure in accordance with the seriousness of the offence.

Viṣa should be tried for the loss of 1000(Paṇas), Agni for the amount less by 1/4th of it(i.e. 750 Paṇas), Jala for the amount less by the third part of it(i.e.670), Dhātā for half of it(500), Taptamāṣa for 400, Taṇḍula for 300, Kośa for 150, Dharmādharmau for 100, and Phāla for a Gocora.

These are the recommendations for an inferior type of person. The amount may be doubled or made four times in the cases of the persons of middle or higher categories.<sup>153</sup>

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152. Kāt. 417-421.

153. Br.12-17, 18.

PITAMĀHA

Pit. who is otherwise very elaborate in his discussion on ordeals, gives one single stanza for the gradation of the ordeal, probably indicating the less importance of such a consideration. The grades mentioned by him are : Dhata for 1000 Panas, Agni for half of it(i.e.500 panas), Jala for quarter of it(250 panas) and Poison for half of it(125 Panas).<sup>154</sup>

PADMAPURĀNA

All wealth, valued on par with the movable or the immovable property involved in the litigation, should be converted into gold and proper ordeal should be tried accordingly.<sup>155</sup>

The commentators and the digest-writers have developed the various points arising from the details given by the Smṛtikāras. These are :-

- (i) Valuation of an offence in some standard (and uniform) measure.
- (ii) Proper gradation of various methods.
- (iii) Reconciliation of the various statements of the Smṛtikāras.

In ancient India, money was calculated in various forms. We find different currencies popular at different times in different parts of the country. It was necessary to decide the uniform value of different currencies particularly for awarding punishments, otherwise convicts at different places might be

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154. Pit. 8

155. PP. 1

asked to pay higher or lower fine even for similar offences.<sup>156</sup>

Manu and other Smṛtikāras have therefore given three standard currencies - in gold, in Silver and in Copper.<sup>157</sup>

In the case of an ordeal, as also for the payment of fine the standard currency recommended by Manu was to be accepted. The later writers prescribed this as a general rule.<sup>158</sup> But this was not sufficient to solve the difficulty, because ~~the~~ the details

156. तत्र कृष्णलभाषसुवर्णमृत्तादिशब्दैरर्थदृष्टा वक्तव्यास्ते च प्रतिदेशं भिन्नपरि-  
माणार्था इत्येकरूपापराधेऽपि देशभेदेन न्यूनाधिकदण्डो मा भूदिति कृष्णल्लादि-  
शब्दानां नियतपरिमाणविषयत्वं दण्डव्यवहारे दृष्टयितुमाह जातसूर्य इति ।

Mit. on Yāj. I. 361

157. Vide Manu.VIII.131-137, Yāj.I.361-365 etc. Tables for currencies in gold, silver and copper may be given in short as follows :-

(A) - Suvarṇamāna (Golden currency).

8 Trasareṇu = 1 Likṣā; 3 Likṣās = 1 Rājasarṣapa;  
3 Rājasarṣapa = 1 Gaurasarṣapa; 6 Gaura. = 1 Yava.  
3 Yava. = 1 Kṛṣṇāla; 5 Kṛṣṇālas = 1 Māṣa;  
16 Māṣa = 1 Suvarṇa; 4 or 5 Suvarṇa = 1 Pala.

N.B. A Yava can be sūkṣma, madhyama or sthūla. We have to take here madhyama yava.

(B) Rājatonmāna (Silver currency)

2 Kṛṣṇālas = 1 Māṣa; 16 Māṣas = 1 Dharāṇa (or 1 Purāṇa)  
10 Dharāṇas = 1 Śatamāna (or Pala); 4 Suvarṇas = 1 Niṣka

(C) Tamronmāna (Copper currency)

1/4 Pala (Golden or copper) = 1 Karṣa or Paṇa or Kārṣāpaṇa.

158. दिव्ये दण्डे च मनुक्तं परिमाणं याधम् । VP175

given by these Smṛtikāras are confusing, A Suvarṇa, for example is equal to 4 Palas according to some, while according to others it is equal to 5 Palas. A Karṣa is available in all the three currencies (i.e. Suvarṇakarṣa, Rajatakarṣa and the Tāmrakarṣa) and so on.

Mit. therefore points out that in the stanza 'Nāśahasrāt' etc. one must take Tāmrika Pana (i.e. Kārṣāpana)<sup>159</sup>, while digests like SC, VN etc. explain that it is not possible to adhere to the measures given by Manu. These digests plead for the currencies popular in their times and rather give complete tables converting the values recommended by the Smṛtikāras into the currencies recommended by them.

The SC points out that all measures must be converted into Vyāvahārika Niṣka. This can be concluded on the following grounds: The General rule is that in case of an ordeal, the measures given by Manu must be followed, but this is practically not possible because Manu's measures indicate a much higher value. For example, in stanzas like 'Niṣke to Satyavacanam,' if we take Manu's Niṣka we must remember that Manu's Niṣka is Rajatapāṭmaka) i.e. to be calculated in the silver currency) and it values more than half the golden Karṣa. Now, if this oath of Satyavacana is to be conducted to a Brahmin, the value of the offence must be four times larger (i.e. equal to 4 Niṣkas). That is of course a very big amount as against the milder form i.e. an oath of Satyavacana. We must therefore resort to the Vyāvahārika Niṣka which is much reasonable. All the measures, either in Kṛṣṇalas (given by Viṣṇu), Kārṣāpanas (given by Brhaspati) and Suvarṇas (given by Kātyāyana)

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159. 'नासहस्राक्षरेट्काय' मित्रत्र तु तादृिकपणसहरजं बोद्धव्यम् । Mit. on Yāj. II-99.

could be conveniently converted into Vyāvahārika Niṣka with the following table : 1 Vyāvahārika Niṣka = 80 Kārṣāpanas

or = 20 Kṛṣṇālas

or = 1/4 Suvarṇa.

SC gives a complete table converting the Suvarṇa values of ordeal given by Kāt. into the Vyāvahārika Niṣka by supplementing it with more details - by giving further divisions of the methods given by the Smṛtikāra or by adding other methods to it e.g. the digest divides Kośa into two. Alpābhiyogavihita and Mahābhiyogavihita; Dharmaja into three i.e. for Uttama, Madhyama and Nikṛṣṭa, while it adds the methods like those of Puṣpa, touching the feet of Brahmins, Iṣṭāpūrtapradāna and Jātisāpathas. Complete table given by SC is produced here, with asteric mark on the methods originally referred by Kāt.

- \* 1) Viṣa for 400 Niṣkas.
- \* 2) Agni for 320 Niṣkas.
- \* 3) Jala for 240 Niṣkas.
- \* 4) Dhātā for 160 Niṣkas.
- \* 5) (Mahābhiyoga)Kośa for 120 Niṣkas.
- \* The same Kośa can be tried for 80, 40 or 24 Niṣkas.
- \* 6) Tanḍula for 6 Niṣkas (i.e. 1
- 7) Dharmaja for 5 Niṣkas  
(for Uttama)
- 8) (Alpābhiyoga)Kośa for 3 Niṣkas.
- 9) Puṣpa - for little less than 3 Niṣkas.
- 10) Dharmaja(for Madhyama) - 2½ Niṣkas.
- 11) Touching the feet of Brahmin, Father and the image of god...for 2 Niṣkas.
- \* 12) Touching the head of son and wife for 1½ Niṣkas (30 Kṛṣṇālas)
- 13) Dharmaja(for Nikṛṣṭa) for more than 1.1/4 Niṣkas.
- 14) Methods like Iṣṭāpūrta etc. for 1 Niṣka.
- \* 15) Laukika Sāpathas for 4 tens of a Niṣka (7½ Kṛṣṇālas)
- 16) Jātisāpathas - 20th part of Niṣka.

The recommendations given by Kāt. should be taken as referring to the cases of Apahṇava; while those given by Br. to the cases of Apahāra, the digest points out. Br. has given the values of the offences in Kārṣāpaṇa and with references to the Uttama, Madhyama and Adhama types of persons. Values in Kārṣāpaṇa given by Br. can be transferred to the Vyāvahārika Niska as follows :-

(N = Niska, K = Kṛṣṇalas, Y = Yava)  
G = Gōvyakti.

	IN TERMS OF VYĀ.NISKA			(BR.) IN TERMS OF KĀRSĀPANA		
	Nikṛṣṭa	Madhyama	Uttama	Nikṛṣṭa	Madhyama	Uttama
Viśa	12½ N.	25 N.	50 N.	1000	2000	4000
Agni	9 N. 7½ K.	19¼ N.	37½ N.	750	1500	3000
Jala	8 N. 7 K. - 1 Y. +	16 N. 13 K. 1 Y.	33 N. 7 K. - 1 Y.	670	1340	2680
Dhātā	6¼ N.	12½ N.	25 N.	5000	1000	2000
Taptamāṣa	5 N.	10 N.	20 N.	400	800	1600
Tandula	3¾ N.	7½ N.	15 N.	300	600	1200
Kośa	1⅞ N.	3¾ N.	7½ N.	150	300	600
Dharmaja	1¼ N.	2½ N.	5 N.	100	200	400
Phāla	1 G.	2 G.	4 G.	Phāla is strictly reserved for Gocora and is dependent on the number of cows stolen.		

Other points referred to by SC are as follows :-

- (1) In all civil cases, offences valuing more than 500 Panas are supposed to be the serious offences and those less than

500 Panas are the light offences. All the cases referred to here in this table are the civil cases, seriousness of which can be valued on the basis of the money involved.

(ii) The seriousness of the criminal cases could be decided on the basis of the punishment or the Prāyaścitta a person might require to undergo.

(iii) Values given by Yāj. in Nāsaḥasrāt etc. should be taken as referring to the persons of the middle category (Madhyama), because in the case of the person of a lower category, an offence valuing less than 1000 (Panas) will be treated as a serious offence while in the case of the person of a higher category, the offence valued less than 2000 Panas will be treated as a light offence.

(iv) Pit.'s stanza (Sahasreṣṭu etc) should be taken as referring to the persons that are the repeaters of the offences. Thus even if he is an Uttama person, he will have to undergo Dhātā for the offence valued to be four times less than 1000 (Panas).

(v) No writer has given the values of the offences for the oaths like Satya, Puṣpa etc, but these should be adjusted with the arrangement (given by Kāt. or even by Viṣṇu) for the cases of Apahmava.<sup>160</sup>

VN has following elaborate discussion in this respect.

"We find that writers like Br. give the values of various ordeals in thousands while other like Kāt. give them in hundreds.

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160. SC pp.232-239.

We may find these statements incongruent. If however we have to reconcile these statements, we must accept the details of Br. as per convention(Nyāya) that whichever is larger or bigger must be accepted.

A general rule in this respect however is :- whenever we find any number mentioned without any specific form of measure, we must take it as pertaining to the Paṇas since people popularly commerce in that currency.

But as regards to Paṇas also, we have four different opinions. (i) The(Suvarṇa) Paṇa explained by the Vaiyākaraṇas as that equal to 4 Kākinīs (ii) The Kārṣāpaṇa made of copper. (iii) The Daśamānātmaka Paṇa wherein 1 Māna = 1 Taṇḍula and 10 Mānas (or Taṇḍulas) = 1 Paṇa and (iv) Paṇa calculated in Māṣas i.e. 1 Paṇa = 20 Māṣas.

Out of these 4 types of Paṇas, fourth type is straightway rejected by the rule that the Paṇa of 20 Māṣas is recommended for all purposes except ordeals. Similarly, the second variety also gets itself dropped since writers like Viṣṇu and Kāt. have clearly pointed out that value of an offence must be measured in gold. We have thus only two options i.e. the Vaiyākaraṇa Paṇa and the Daśamānātmaka Paṇa . Here we can have following arrangement :- When the number is given in thousands we must take the first Paṇa(which is equivalent to 4 Kākinīs) and when it is in hundreds we should take it in the Daśamānātmaka Paṇa.

Now, if we calculate the details given by Nār.,Kāt and others in the chapter of punishment, we find that the first Paṇa is equal to 16 Mānas(i.e. it is Soḍaśamānātmaka). It is as follows :-



- (a) 1 Māṣa = 8 Kākinīs.  
 1 Māna(Tandula) = 8 Kākinīs.  
 $\therefore$  1 Māṣa = 1 Māna.
- (b) 1 Mahiṣī = 8 Māṣas.  
 1 Mahiṣī = 2 quarters of a Pana.  
 $\therefore$  8 Māṣas = 2 quarters of a Pana  
 $\therefore$  1 Pana = 16 Māṣas = 16 Mānas.

If the accused is full of merits, we must calculate the number given by the Smṛtikāra in the Soḍaśamānātmaka Pana, if the person is without merits, we should find the number in the Daśamānātmaka Pana. We can thus give the following table indicating the value of an offence in the Daśamānātmaka Pana.

I-(a) 10 to 15 Panas	- Dharmaja for a sūdra, but Phāla for a Kṛṣṭīvala.
15 to 30 Panas	- Kośa for a Sūdra.
30 to 40 Panas	- Tandula for a Sūdra.
40 to 50 Panas	* Taptamāṣa for a Sūdra.
50 to 67 Panas	- Tulā for a Sūdra.
67 to 75 Panas	- Jala for a Sūdra.
75 to 100 Panas	- Agni for a Sūdra.
100 and above	- Viṣa for a Sūdra.

(b) All these values are given with reference to a Sūdra. In the cases of Vaiśya, Kṣatriya and Brahmin, the respective amount must be doubled, trebled or made four times as per recommendations of Viṣṇu.

Br. gives three categories of the persons undergoing the trials. These are (i) Lowest(Nikṛṣṭa), (ii) Middle(Madhyama) and

and (iii) Highest (Uttama). For the persons of the Middle  $\mathfrak{m}$  and the Highest categories the respective amount must be doubled or made four times. This however presupposes a category in between the middle  $\mathfrak{m}$  and the Highest, where the respective amount should be made three times.

Now, a  $\mathfrak{S}$ ūdra would include all the persons coming under  $\mathfrak{S}$ ūdra class (Sadharmāṇah) and others born of lower castes. Similarly many of the Brahmins are treated as  $\mathfrak{S}$ ūdras on the basis of the statement of Kāt.

II-(a) Viṣṇu has given various  $\mathfrak{S}$ apathas valued in terms of  $\mathfrak{K}$ ṛṣṇalas. There is no uniformity as regards to the value of a  $\mathfrak{K}$ ṛṣṇala. A  $\mathfrak{K}$ ṛṣṇala of Yāj. and Manu amounts to 7 Māṣas less by 2 Kākinīs (i.e. 26 Kākinīs) while that of Viṣṇu is of 6 Māṣas less by 3 Kākinīs (i.e. 21 Kākinīs). We must obviously follow Viṣṇu's  $\mathfrak{S}$ apathas in the  $\mathfrak{k}$ ṛṣṇala recommended by him. These are  $\mathfrak{D}$ ūrvākara for 1  $\mathfrak{k}$ ṛṣṇala, Tilakara for 2, Rajatakara for 3, Suvarṇakara for 4,  $\mathfrak{S}$ īroddhṛtamahīkara for 5, Kosa for half a Suvarṇa and so on.

(b) Viṣṇu has not given various  $\mathfrak{s}$ apathas such as touching the head of son or wife mentioned by Manu and others. These should be adjusted between  $\mathfrak{S}$ īroddhṛtamahīkara and the Kosa mentioned by him.<sup>161</sup>

According to SV, the numbers in thousands given by Br. belong to the Tandulatulitamānasuvarṇa (=Mānas) which can be converted into Panas by dividing those figures by ten. The

Digest has accordingly, given a table of conversion of the Br.'s numbers into (Daśamānātmaka) Paṇas.

SV has advocated the same <sup>arguments</sup> ~~arrangements~~ as given by VN and has established that the incongruency between the two sets of figures i.e. given in hundrds and those in thousands can be removed by resorting to the Paṇas which can be of two types i.e. Soḍaśamānātmaka and Daśamānātmaka out of which, the former is meant for the accused person with merit while the latter for one without merits.

SV has strongly rejected the plea made by the SC that all these figures should be converted into the Vyāvahārika Niṣka on the ground that it cannot be supported by the Smṛti texts and secondly that we can very well co-relate these various numbers and remove the incongruency by resorting to Paṇas which are already recommended by the Sāstrakāras (vide SV pp.172-182).

An interesting point notable in this whole discussion concerning the seriousness of an offence is that though there is a difference of opinion amongst the writers as regards to the value for and the currency in which the seriousness of an offence should be calculated, the order of the ordeal as such given by these writers is uniformly the same. Thus every writer recommends Viṣa for the seriousmost offence, then comes Agni, then Jala, then Tulā and so on.

It appears that this aspect of ordeal is gradually getting lesser importance. We find that digests like Madanaratnapradīpa, Nṛsīṃhaprasāda, Divyatattva and Vyāvahāraprakāśa have rather discussed this topic of grading the ordeal in relation with the

value of the offence with reservation and have satisfied themselves only by collecting the traditional information or by merely quoting the stanzas of Kāt. and Br., while digests like Vyavahāramayūkha have preferred to pass over the discussion. These works thus appear attaching lesser importance to this topic.

We can give the following reasons for such a development.

(i) In course of time, we find an overall change in the general positions of the ordeals. Viṣa and Jala, the important ordeals of the Dh.systems start going into background and Taptamāṣa, comparatively an inferior ordeal, attains importance. The order of the ordeal (from the point of view of the seriousness of the offence) given by Dh.writers does not agree with the one given by Alberuni. Alberuni who describes these methods in their succeeding higher positions gives following order. Oaths, Viṣa, Jala, Kosa, Tulā, Taptamāṣa and Agni (Vide Chapter VII).

(ii) Dh.writers recommended particular method for a particular kind of dispute. The result was that particular ordeal was fixed for particular kind of offence. Tandula and Taptamāṣa were particularly recommended for the cases of theft and they came to be reserved for the offences of theft. These rules limited the scope of deciding an ordeal on the basis of the seriousness of the offence.

(iii) Rules regarding the physical ability of the person undergoing the trial and those concerning with the suitability of the season also limited the scope of such a consideration.

(iv) All the methods described in Dharmaśāstra were gradually made milder. Not a single test was allowed to be dreadful or risky for human life. Grading of these ordeals as serious or safe, therefore, gradually became less important.

(v) According to the Dh.rules, ordeal was always employed with the mutual consent of the parties concerned. It was never forced on anybody and was to be undergone willfully. As a result of this provision, we find that the person was given freedom to select the method of his choice. [Vide : The case of Kṛṣṇāji Bin Bāpuji Bodkā Vs. Somāji Bin Bāpuji Bodkā given in chapter VII]

(vi) Popularity of these methods varied individually from time to time. The popular method of the day was in more demand.

(B) Consideration of ordeal from the point of view of the time or the suitability of the season :

The earlier writers like Gautama, Āpastamba, Śaṅkha and Likhita and Manu have not discussed or given the rules for the time or the season for conducting an ordeal. The discussion, as it appears, is first taken up by Viṣṇu. While discussing the proper time for the ordeal, the Dh.writers have mainly discussed 'Rtuto Divyavyavasthā' i.e. the favourableness of the season'. They have also discussed the time i.e. the part of the day or the actual moment when the ordeal should be conducted. We shall discuss here these rules in due order.

VISNU

Tulā must not be conducted when there is wind. Agni should not be conducted in the Sarad and Grīṣma. Jala must not be conducted in Hemanta and Śisīra. Viṣa should not be given in the rainy season.<sup>162</sup>

It is interesting to note that Yāj. who has standardised the ordeals in general and has discussed all the important aspects of the ordeals has however not discussed the favourable-ness of the season for these ordeals. Amongst later Smṛtikāras we find that almost every Smṛtikāra stresses the importance of conducting the ordeal at a proper time and proper place. If this is not observed the ordeal may fail in its purpose, they point out.<sup>163</sup> Amongst these writers Nār., Kāt., Br., and Pit. are important. We however find that Nār. discusses both the aspects - the time and place of conducting ordeals - without any discrimination, Br. is silent on both, Kāt. discusses the place of conducting the ordeals and Pit. elucidates the rules regarding the time of ordeal. We thus find Viṣṇu, Nār., and Pit. as the main writers discussing the time of conducting an ordeal.

NĀRADA

Nār. says that, fire ordeal is recommended in the Varsā, the balance in the Śisīra, the water in Grīṣma and the Poison in the cold season. The water ~~should~~ ordeal should not be tried in the cold season, not fire in the heat, the Poison in the rains and the Balance in the wind.<sup>164</sup>

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162. Viṣṇu. IX. 23. 30

163. Kāt. 437.

164. Nār. 254, 259.

PITĀMAHA

Pit. points out that the Caitra, Mārgasīrṣa and Vaisākha are undisputedly common months for all the ordeals in general. The Balance is meant for all seasons but it must be avoided when the wind is blowing. The Fire<sup>is</sup> recommended in the Śisīra, Hemanta and Varsā, the water in Śarad and Grīṣma, Viṣa in Hemanta and Śisīra. Kosa is recommended all the times, Tulā is also meant for<sup>all</sup> the times. In the Rainy season, the Viṣa flares up beyond control.<sup>165</sup>

We can analyse these rules in the following table.

Season	VIṢṆU	NĀRADA	PITĀMAHA
VASANTA (Phālguna- Caitra)			
GRĪṢMA (Vaisākha- Jyestha)	No Agni	Water recommend- ed.	Water recommen- ded.
VARṢA (Āṣāḍha- Srāvaṇa)	No Poison	Agni recommended No Poison.	Agni recommen- ded. Poison flares up.
SARAD (Bhādrapada- Asvin)	No Agni		Water recommen- ded.
HEMANTA (Kārtika- Mārgasīrṣa)	No water		Agni recommended. Poison recommen- ded.
ŚISĪRA (Pauṣa-Māgha)	No Water	Dhātā recommen- ded.	Agni recommended. Poison recommen- ded.
GENERAL REMARKS	No Tulā when wind blows.	No water in Cold season, Agni in hot season, Balance when the wind blows.	1) Caitra, Mārga- sīrṣa and Vaisākha comm- on months for all. 2) Kosa, Tulā in all seasons.

If we examine the rules regarding the favourableness of the season for conducting the ordeal, we find that all restrictions of seasons for the application of an ordeal, unless they are vitally connected with the working of the trial, are gradually relaxed. On the whole, we thus find a tendency of the Dh. writers to make ordeals freely available so that they could be used to their maximum advantage. We have already seen that the caste restrictions on these trials were removed and all ordeals were made free for all persons. Similarly, here also we find a tendency of removing the restrictions of seasons.

First of all, we must point out that rules regarding the season are given by the Smṛtikāras only with reference to the five ordeals given by Viṣṇu and Yāj. The other ordeals added later on by subsequent writers are not discussed from the season point of view.

Amongst the five ordeals also, the Kośa and Tulā are recommended in all the seasons. We find that Tulā is not allowed when there is wind blowing. This is quite obvious, because the result (the success or the failure) in this method depends upon the movement of the scales. It is not possible to decide correctly the position of the scales if they are constantly moving due to the wind. Save this condition, we find that Tulā and Kośa are recommended for all the seasons.

We have observed above that the ordeals added later on are not discussed from the season point of view. Mit. DT, SV clearly point out that since no specific rules are given for



these ordeals, they should be taken as available in all the seasons,<sup>166</sup> while SC explains that the Kōśa (the last of the five ordeals) should include the other ordeals. Consideration of season is thus really meant for three ordeals i.e. Agni, Jala and Viṣa.<sup>167</sup> Here also we find a tendency of lessening the restrictions and making them as available as possible.

A simple observation of the table given above will reveal to us a gradual change in the view point of the Writers. Viṣṇu has positively denied the use of three ordeals in respective seasons. Nārada and Pit. do not speak of such denials. They recommend a particular ordeal for a particular season.

We find that Viṣṇu has denied the use of Agni and Jala for two seasons each and that of poison for one season only. Nār. denies Agni in hot weather and water in cold. He does not restrict the use of Agni and water in any particular season. Consideration of weather in the cases of these ordeals was perhaps more important to him than restricting them in a particular season. It will appear that Pit. also like Nār., has thought of these ordeals from the recommendation-(and not the denial-) point of view. He does not deny these ordeals in any season as such. He, on the contrary, points out in general three months which could be used for any ordeal without any restriction.

<sup>166</sup> कौशग्रहणं सर्वशयथानामुपलक्षणम् । तण्डुलानां पुनर्विशेषानभिधानात्सार्व-  
-कायिकत्वम् । Mit. on Yaj. II-97... तण्डुलादीनां तु विशेषकालानभिधानात्  
सार्वकायिकत्वम् । DT p. 576.

<sup>167</sup> कौशग्रहणं तण्डुलप्रदर्शनार्थमित्युक्तं ०याख्यातृभिः । तेनायमभ्युविषाणामेवर्तुते  
०यवस्था । SC pp 242-43.

The Poison ordeal is denied only in the rainy season and therefore it is available in all other seasons. This restriction is also gradually removed. Nār. has made a general recommendation for its use in cold weather. He denies it in the rainy season no doubt, but this denial is not very strict because he himself recommends the use of specific quantity of poison in the rainy season. Digests like DT therefore declare that the denial of the Poison in the rainy season relates only with the Poison of higher quantity. Pit. points out that the Poison flares up in the rainy season. Save this difficulty, he has no objection in using it in the rainy season.<sup>168</sup>

Thus we find that the season consideration of the ordeal is shifted to the suitability of the weather, and except that the fire and water ordeals are avoided in extremely hot or extremely cold weather, there is a tendency of making all the ordeals available in all the seasons.

With reference to the time of conducting ordeal, Viṣṇu and Yāj. points out in general that the ordeals must be conducted at the Sunrise.<sup>169</sup> According to SC it only means that the ordeals must be conducted in the former part of the day,<sup>170</sup> while VN observes that unless otherwise specially recommended, the ordeals must be conducted in the former part of the day.<sup>171</sup>

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168. For special rules for conducting the poison ordeal in the rainy season vide discussion on the poison ordeal in Chapter V.

169. Viṣṇu IX.33, Yāj. II.97

170. तत्र सूर्योदयपदेन पूर्वार्द्धे एव वचोभूया विहित इत्यवगन्तव्यम् । SC p.252.

171. अनुक्तकाकविशेषाणां दिव्यानां पूर्वार्द्धे एव काकः । VN p.142

Pit. in this connection points out that the fire, Balance and Kosa must be conducted in the former part of the day, Water in the mid-day and Poison in the latter part of the night.<sup>172</sup>

Commenting upon the Yāj.stanza, the Mit. points out that sun-rise is the general time recommended for the ordeal, but we must follow the path of Śiṣṭas according to whom ordeals are conducted (at sunrise) on Sundays only.<sup>173</sup> Other writers also point out that the ordeals should be conducted on Sunday. According to Prajāpati however all ordeals must be conducted in the former part of the day on any Tuesday or Sunday.<sup>174</sup> According to the stanzas quoted by DT, VP etc. ordeals are not conducted on Tuesdays and Saturdays.

According to <sup>Vṛamitrada</sup>VP the ordeal must be conducted on the auspicious day of the Bright fortnight.<sup>175</sup>

DT quotes stanzas from a work on Astrology, according to which a person desirous of being victorious in an ordeal should not undergo it -(a) when the Sun is (i) in the Simha or Makara

172. Pit.17-18.

173. अत्र यथापि सूर्योदय इत्यादिशेषोक्तं तथापि शिष्टसमाचाराद् भानुवासरे दिव्यानि देयानि । Mit. on Yāj. II:97

It will appear that this rule was closely followed by the people. Vide Phaladivya described in the kittur inscription, and examples available through Maratha records (Chapter VII). Also vide the practices of tribes like Bhil and others in Appendix.I.

174. Prajāpati,2.

175. अत्र संक्षेपतो दिव्यसामान्यविधिरुच्यते । शुक्लपक्षे शुभादिने कृतनित्यक्रियः सोपवासो यजमानः ... etc Vṛamitrada quoted by DK p.447

zodiacs (ii) in conjunction with the Jupiter or (iii) in the setting position, as well as (b) in the intercalary month. (Adhika Māsa).

The wise persons would advise ordeal when the Sun and Jupiter are in their purest positions(i.e. they should not be in undesirable conjunction or under the ill-effects of any other planet, nor should they be in their weakest positions such as 4th,8th or 12th house) : The wise persons would not recommend it when the Sukra is setting. An ordeal or an Expiation should not be undertaken on 8th or 14th day of the fortnight. Similarly, an ordeal or a marriage ceremony should not be performed on Tuesdays and Saturdays.

The digest also quotes stanzas from Dīpakalikā which gives exhaustive details of the planetary positions in which ordeal is either encouraged or rejected. These can be summarised as follows :-

The ordeal is not advised : (i) when the Sukra is setting. (ii) the Sun is in the 8th house. (iii) when the Sun and Jupiter are in conjunction with each other. (iv) in the birth<sup>th</sup> month of the person to be tried. (v) when the moon is <sup>in</sup> 8th from the Janmanakṣatra (vi) in the month of Bhādrapada (vii) in an intercalary month. (viii) if the Janmanakṣatra falls on that day.

The ordeal is recommended (a) when the Sun, Jupiter and Moon are in their purest positions(i.e. they should not be in the 4th, 8th or 12th house). (b) when the 'cara' planets are in the 2nd and 1st house(Dhanasthāna and Tanusthāna)[i.e. when Guru,

Sukra and Budha are rising and the 'Lagna' is belonging to the Tulā, Mēsa, Karka and Makar zodiacs] (c) any auspicious moment.<sup>176</sup>

Ordeals were conducted on auspicious moments decided as per astrological calculations, during the Maratha period. If the ordeal could not be performed on the day and time fixed, a fresh Muhūrta was calculated for the purpose (Vide Chapter VII).

Mit. points out that the various aspects that are to be considered for selecting a particular ordeal such as the caste and eligibility of the person, seriousness of the offence, suitability of time etc. should be considered conjointly and not in isolation e.g. (a) Tulā is recommended for woman but it is not so that a woman must always be tried with the Tulā only, since other methods like Kōśa, Agni etc. can be available for her. Obviously, we have to see the rules of season and the seriousness of the offence before deciding the ordeal. (b) Similarly, Brahmins are also not always to be tried by Balance only, since other ordeals

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176. ज्योतिषे - सिंहस्थे मकरस्थे च जीवे चास्तमुपागते । मखमासे न कर्तव्या परीक्षा ज्यकां क्षिणा । रविशुद्धौ गुरौ चैव न शुक्लेऽस्तंगते पुनः । सिंहस्थे च रवौ नैव परीक्षा शस्यते बृधैः ॥ नाष्टम्यां न चतुर्दश्यां प्रायश्चित्तपरीक्षणे न परीक्षा विवाहश्च शान्तिभौमदिने भवेत् ॥  
रविशुद्धौ गुरौ चैवेत्यन शस्यत इति शेषः । तथा च दीपकालिकायां -  
नौ शुक्रास्तेऽर्के गुरुसहितरवौ जन्ममासेऽष्टमेऽथै । विष्टौ मासे मकार्ये कुजशान्तिदिवसे जन्मतारासु चाथ । नाडीनक्षत्रहीने गुरुरावेरजनीनाथ-  
-तारानिशुद्धौ । प्रातः कार्या परीक्षा द्विबुध-चरगृहांशोदये शस्तवर्गने ॥

could be available to them. (c) It has been pointed out that Agni should not be tried on a leper, water on a person suffering from Asthema or Poison for a person suffering from Bile or Phlegma. Now, even if the caste of the person or the season recommended be suitable, these ordeals cannot be tried on these persons on health grounds.<sup>177</sup>

(C) Consideration of an ordeal from the point of view of the place of conducting the trial.

We shall discuss here the rules regarding the place of conducting the ordeal.

Gautama says that a Śapatha must be conducted in the assembly of gods, in the assembly of Brahmins or in the royal assembly. Explaining this Sūtra, Maskarin gives following points:-

- (i) The word Deva here means the idols of the gods or gods like Sun.
- (ii) This rule regarding the place of conduction of the oaths relates with the oaths to be used in the legal disputes. (Vyavahāre) and not the popular ones (Laukika). For popular oaths there are no restrictions. They could be conducted anywhere.
- (iii) The places recommended in the Sūtra are referred to in due order of preference i.e. each latter one is to be selected only in the absence or the non-availability of the former one - Non-availability of the place must be viewed from the point of view of its being engaged in some other suit.

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177. Vide Mit. on Yāj. II. 98.

- (iv) In fact, the Sūtrakara should have said 'in the presence of gods etc.' (Samaksam) instead of in the assembly of gods etc. (Samsadi), but it only means that the place selected must be a constituted ~~of~~ assembly (Sabhā) in the vicinity of gods, because the constituted assembly (has its rules of procedure and therefore) is free from frauds.<sup>178</sup>

Gautama-mitākṣarā points out that the assembly of gods means a place of live or stern deity (Ugradevatā). The commentary further points out that the place for an oath must be selected in the cases of Kṣatriya etc. on the basis of the seriousness of the offences - vicinity of gods must be the place for the serious offences, while cases <sup>of</sup> trifling matter could be tried at any other place.<sup>179</sup>

178. तदेवराजब्राह्मणसंसदि स्थादब्राह्मणानाम् । GDS 13.14.  
... तच्छपथं देवसंसदि देवसंनिधौ । देवशब्देन देवता प्रातिमा ~~न~~ आदित्यादयो वा उच्यन्ते ।.. तद्ग्रहणं लौकिकव्यवहारनिवृत्त्यर्थम् । एवं च व्यवहारे देवतादि-संनिधौ, लौकिके यत्र कुत्रापि दिति द्रष्टव्यम् ।.. तत्र देवताऽलाभे विप्रसंसदि तदलाभे राजसंसदि द्रष्टव्यम् । तथा च स्मृत्यन्तरम् - अब्राह्मणानृपः सम्यक् कारयेद्देवसंनिधौ । शपथं तदलाभे च ब्राह्मणस्य समीपतः ॥ तदलाभे सुपत्याथ भगवान् काश्यपोऽब्रवीत् ॥ इति । अलाभोऽपि कार्यान्तरव्यापेक्षया द्रष्टव्यः ।.. देवराजब्राह्मणसमक्षमिति वक्तव्ये संसदिग्रहणं देवतासंनिहित-स्थानोपसंग्रहार्थम् । सभायाश्च छलादिदोषरहितायाश्च ।

Maskaribhāṣya quoted by DK pp. 429-430.

- 179 तच्छपथेन सत्यकर्म देवसंसदि उच्चाणां देवतानां संनिधौ ब्राह्मणानां संसदि परिषदि ना भवति । शत्रिमादीनामर्थगुरुत्वलघुत्वापेक्षौ विकल्पः । महत्यर्थे देवतासंनिधौ, अल्पीयसि त्वन्यत्र ।

Gautama-mitākṣarā quoted by DK p 430

Āpastamba, Śaṅkha-Likhita and Manu have not given any details as regards to the place of conducting the ordeals.

Ap

Viṣṇu, in general, recommends the 'Vicinity of gods or Brahmins' as the place for conducting these trials. Yāj. also gives a similar stanza which reads Nṛpa instead of Deva recommending the vicinity of the king or Brahmins as the places of the trial.<sup>180</sup>

The variant reading speaks of a very important change in the history of ordeals. The ordeals are gradually taken over by the king. It thus becomes a sole responsibility of the king's office to conduct ordeals properly. As a result, conducting of ordeal becomes more elaborate, technical and a matter of public concern. Viśvarūpa in this connection makes an important interesting statement. He says that the recommendation of the vicinity of the king is meant for bringing serenity ~~of~~ to the trial.<sup>181</sup>

We have already seen that Nār. has stressed the importance of the proper place for conducting a trial. The ordeal must be conducted publicly. Kāt. points out that a trial conducted outside the village or at a lonely place fails in achieving its purpose,<sup>182</sup> which according to the digests like SC, SV ~~to~~ etc. means that the ordeal must be conducted in the presence of many persons.<sup>183</sup> We find that in all such trials, the respected

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180. Viṣṇu IX.33, Yaj. II.97

181. नृपादिसंनिधिवचनं कार्यगौरवप्राप्तयेत्यर्थम् । Viśva. on Yāj. II.97.

182. Kāt.437.

183. वासी निवासी जनस्थानं तस्माद् बहिर्निर्जन प्रदेश इति यावत् । अनेन जनसमक्षमेव दिव्यानि देयानीत्यर्थादुक्तम् । SC p.244



persons of the society were to act as witnesses.<sup>184</sup>

Selection of the proper place, according to Kāt. must be made in accordance with the kind of the offence for which or the type of the person for whom the trial is undertaken. He thus says that a person who is charged of having committed sin (Abhis'asta) and all the great sinners in general must be tried at Indrasthāna, the person charged of treason (Rājadroha) must be tried at the Royal gate; the person born of the parents who have married according to the Pratiloma form of marriage must be tried on the cross-roads and in all other cases, the ordeal must be executed in the Sabhā.<sup>185</sup>

The word Indrasthāna is variously explained. (i) According to DT, VP etc. it means the place where a pillar is erected in the honour of Indra. (ii) According to SV it may be taken for any famous temple. (iii) Bālabhāṭṭi explains that (a) According to some it should be a temple of Indra where the idol of Indra is erected or (b) Indradhvajayūthasthāna according to Kalpataru (c) the temple of the highest deity according to us.<sup>186</sup>

Prajāpati gives the vicinity of Candikā and Rudra as the proper places for conducting the ordeals.<sup>187</sup>

184. Pit. 60

185. Kāt. 434-35.

186. (i) इन्द्रस्थाने - इन्द्रध्वजस्थाने DT p. 576; इन्द्रध्वजपूजास्थाने VP p. 182.

(ii) इन्द्रस्थानमिति प्रख्यातदेवतायतनमुपलक्षयति । SV p. 183.

(iii) इन्द्रस्थानमिन्द्रप्राप्तिमायनं तत्रैत्यर्थः इति कोपेत् । इन्द्रध्वजयूथस्थान-  
-मिति कल्पतरुः । इन्द्रस्य परेशस्य स्थानं तत्रैति स्वयम् ।

- Bālabhāṭṭi (Yāj. II. 99)

187. Prajāpati, 2.

Thus if we summarise the details available regarding the place of ordeal, we can analyse them in the following heads :-

- (i) The Vicinity of the Gods : This is extended to (a) Indra-sthāna (b) any temple (c) the most famous temple of the town (d) the temple of the highest deity (e) the temples of Candikā and Rudra (Lord Siva).
- (ii) The Royal gate or the Sabhā.
- (iii) Cross-roads and other public places.

These heads reveal to ~~the~~ some of the aspects of the ordeals in general.

- (i) The ordeals expect divine intervention in executing justice. The whole procedure more or less tends out to be a religious ceremony. The vicinity of god or the temple is therefore supposed to be the most befitting place for conducting a trial.
- (ii) The ordeals which were voluntary, were getting more legal and technical and the king's and the courts influence on such trials ~~were~~<sup>was</sup> gradually increasing day by day. Hence the importance of the places like the Royal gate or the Sabhā.
- (iii) A natural corollary to this, is the expectation that the ordeals must be executed publicly. Hence, the recommendation of the cross-roads.

It must be pointed out that the details regarding the place of ordeal discussed here are in general, while the places recommended for any of the ordeals in particular are

discussed separately. (Vide discussion of the various ordeals in Chapter V).

We may however note the following common points :-

- (i) The site selected for the trial is made clean and pure by plastering it with cowdung and by consecrating it with various religious rites.
- (ii) When the trial is conducted in a temple before the image of the god, the person undergoing the trial performs all the activities facing the god.
- (iii) In all other cases, all the activities are performed by him facing east or north e.g. in the Balance ordeal he should sit in the scale facing east, in the Fire ordeal, we find that nine circles are drawn from west to east. The person crosses them with the red-hot iron ball in hand from the westernmost circle to the eastern one, the site selected for the water ordeal must be on the western bank of the reservoir so that the person undergoing it can perform all rites facing east and so on.

It is rather interesting to note that the details regarding the place of ordeal are faithfully followed by the people through all the ages. Kosá, as pointed out by Alberuni, was conducted in the most venerable temple of the town.<sup>188</sup> We get many examples of ordeals recorded in the historical documents of the Maratha rulers. It becomes clear from ~~the~~ these documents that the parties concerned

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188. Sachau : Alberuni's India, pp.158-160.

were required to go to the places known for ordeals. A complete list of such places known for the ordeals is produced elsewhere. Most of these places are the temples of lord Śiva - tallying with the recommendation of Prajāpati. We have ~~as~~ already observed that the ordeals were conducted under the supervision of the royal office. Muslim rulers did not object to this Hindu method of judicial investigation. Their influence on the method was however not warranted. It is interesting to note that the 'vicinity of gods' recommended by the Dh.writers is extended to the holy Muslim places also. Jumma Masjid is one of the places known for the ordeals given in the list.

The recommendations of the Dh.writers have gone down to the various tribes of India. We have seen that Kāt. has recommended Indrasthāna as one of the places. It is interesting to note that a person accused of adultery in Travancore was permitted to submit to the ordeal of dipping hand in boiling ghee at the temple of Śacīndram. (This temple derives its name for Indra, who according to the legend had illicit intercourse with Ahalyā, the wife of GautamaṚṣi and had to undergo this form of ordeal). In Malbar, if any Brahmin was suspected of theft or co-habitation with a woman of low caste, he was sent for a trial by an ordeal to the pagoda Sujjindra.(Śacīndram). If a Nair was in like manner suspected, he had to submit to the ordeal in the fort of Balipatnam. If a Bhāl is suspected of any crime such as theft or adultery he is brought before Panch. From these various examples we are able to conclude that the Dh. details were very faithfully followed by the people and were brought down by tradition quite upto the modern times.

(4) The cases for which the ordeals are recommended :

The sole aim of the judicial proceeding is to investigate the truth and dispense justice. The dispensers of justice, therefore, have to take into account any factor that may help the investigation and resort to any means that would lead them to establish the truth. A legal dispute should ideally be settled by means of witnesses, says Gautama, but the truth may be established even by means of oaths, he points out. Āpastamba declares that if the human means are not sufficient and the doubt persists, other circumstantial evidence or the divine method of testing the accused person may be utilised.

Before we go into the details regarding the cases for which the ordeals could be used, it will be proper for us to take a general review of the kinds of disputes or the titles of the law discussed by the Dh.writers.

We must firstly know what is a crime or an offence. A crime may be defined as an act or omission that breaks the law and is subject to punishment. But all kinds of breaches of law are not crimes but only those which are deemed to be menaces to the conditions of the existence of society, while others may be termed as wrongs.

The titles of the law are the various sorts of offences in, which the aggrieved persons can go to the court of law to seek justice which can be dispensed to them after proper legal investigations. All such cases would be opened only after a regular plaint from the plaintiff.

But there are certain offences of which a king can take cognisance on his own motion. These are discussed by the Dh.writers under the heads of Aparādhas, Padas and Chalas which are respectively 10, 22 and 50 in number; the ten Aparādhas, according to Nār. are : disobedience of king's order, murder of a woman, confusion of Varnas, Adultery, theft, pregnancy from one not the husband, abuse and defamation, obscenity, assault and abortion.<sup>189</sup> They were called Aparādhas because they were the cognisable offences punishable under the act. The 22 Padas were ripping open an animal's body (with a sharp weapon), destruction of growing crops, incendiarism, rape of a maiden, concealment of treasure-trove, grazing cattle over the field of another, destruction of public garden, poisoning, high treason, unauthorised breaking of royal seal, divulging the secret line of king's policy, releasing from jail a prisoner, appropriation of taxes or fines to be levied to the king and so on. The fifty chalas are mostly the breaches of etiquette before the eyes or in the presence of the king.<sup>190</sup>

The Dh.writers have divided various types of disputes into 16 titles of law. These are mainly divided into two - the civil (Dhanamūla) and the criminal (Himsāmūla).

Discussing the evidential value of the ordeals we have seen that the Dh.writers have repeatedly stressed the need for using a powerful proof and have pointed out that the ordeals should

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189. आशुलङ्घनकलरिः स्त्रीवधो वर्णसंकरः । परस्त्रीगमनं चौर्यं गर्भश्चैव पतिं विना ।  
वाक्पारुष्यमवाच्यं यद्दण्डपाठव्यमेव च । गर्भस्थ पातनं चैवेत्यपराधा दशैव हि ॥

Nār. quoted by SC p. 63 . VP 37

190. Kane, Hist. of Dh. Vol. III pp. 264-66.

never be given preference to the human proofs. Ordeals could be used only in the absence of the human proofs i.e. when they are either not available or not sufficient to throw light on the dispute under investigation.

These are generally the criminal cases in which attempts are often-times made to destroy every sort of evidence. These are the cases such as adultery, theft, heinous action or plotting against the king. A king is advised to make a very free use of ordeal in all such cases. It could however be used with advantage in the Civil cases also.<sup>191</sup>

Nār. therefore points out that the crimes of confused nature such as those taking place in forests, in a lonely place, at night, in the interiors of the house and the cases of concealing deposits or of heinous actions should be tried with ordeals. He further points out that ordeals are recommended in the cases of the doubtful character of woman, thefts and heinous actions, or in all cases of the denial of monetary liability.<sup>192</sup>

Kāt. observes that the cases which could be decided by human proofs must not be tried with the divine proofs and vice-versa i.e. the cases which are to be decided by the divine proofs should not be investigated by human proofs. The cases which are particularly recommended for the trial by an ordeal are (i) all heinous crimes of very grave nature. (ii) the charges of assault and abuse or defamation. (iii) matters arising from the use of force. (iv) persons committing acts under concealed identity (i.e. by wearing masks etc. (v) all kinds of highly sophisticated crimes.

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191. Viṣṇu IX.2-3.

192. Nār.241-242.

(vi) Cases concerned with the life and death of the person.<sup>193</sup>

According to Br., ordeals should not be used in the cases of abuse or defamation or of immovable property, while it could be tried with good efforts in all the four kinds of heinous actions. It must be used for the treason and heinous acts. The offenders such as the forgers of gems, corals, or pearls, one withholding deposits, a murderer, an adulterer must invariably be tried by means of ordeals. In all charges of great sins or misappropriation of deposits, the king should try the cases by ordeals even-though there might be witnesses.<sup>194</sup>

According to Kāt. and Pit., all disputes regarding the immovable property should not be tried with ordeals.<sup>195</sup>

If we analyse these details, we find that the ordeals are principally used for the criminal cases. Br. and Pit. have denied its use in the cases of immovable property or the cases dealing with land, while Kāt. gives other civil cases also in which the ordeal is denied. But, as the commentators point out, this should not be taken as a very strict denial. These are the cases in which human proofs i.e. witnesses documents or possession are generally available and the ordeal therefore naturally becomes inapplicable. But if the human proofs are not available in such cases ordeal can be used without any reservation.<sup>196</sup>

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193. Kāt. 224, 229-232.

194. Br. 4-7

195. Kāt. 240.

196. यन्तु पितामहवचनं 'स्थावरेषु विवादेषु दिव्यानि परिवर्जयेत्' इति तदापि लिखित-सामन्तादिसम्भवे दिव्यानि परिवर्जयेदिति व्याख्येयम्. स्थावरेषु विवादेषु प्रत्यर्थिना रण्डा-व्यभिचारेण दिव्यात्मने कृतेऽपि सामन्तादिदृष्टप्रमाणसम्भवे न दिव्यं ग्राह्यमिति विकल्प-निराकरणार्थं 'स्थावरेषु विवादेषु' इत्यादिपितामहवचनं, नात्यन्तिकं दिव्यानिराकरणार्थं लिखितसामन्तादिसम्भवे स्थावरविवादेष्वनिर्णयप्रसङ्गात् । Mit. on Yāj. II. 96.



Kāt. has in fact clearly pointed out that the gravity of charges in all such cases should be valued in terms of gold and a proper ordeal should accordingly be tried for it. Kāt. and Br. have given tables showing the values of the offences of Apahnavā (denying monetary liability) and Apahāra (doing away with money) for which a particular ordeal could be applied. We find, in the Maratha records, a number of civil cases of various nature being tried by ordeals. Boundary disputes were particularly tried by ordeals.

We shall discuss here the cases that are particularly recommended for trial by an ordeal.

(i) Sandigdherthe : In the cases of doubt i.e. when the human proofs are not available or if available, they are not sufficient. The NMS Bhāṣya explains it as the cases of theft as well as those regarding the persons who are facing false charges.<sup>197</sup>

(ii) Nṛpadrohe : In the cases of treason. This has been explained by Aparārka as (a) attempt to kill the king (b) smuggling the royal money or women. (c) allying with the enemy (d) leaking out the secret policies of the king.<sup>198</sup> It must be observed that all these offences come under the 10 Aparādhas or 22 Padas and are supposed to be very grave. King is asked to make a very free use of ordeal in all these cases.

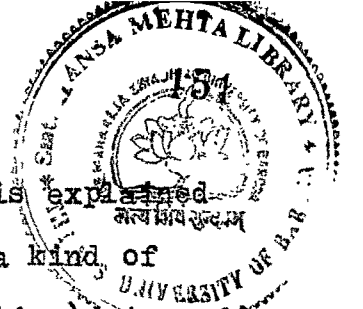
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197. संदिग्धेऽर्थे यैर्मादौ, मिथ्यावृष्टितानां परीक्षार्थं नारदप्रोक्ताः सत्यावृत्तिमाजिका वक्ष्यन्त इति शेषः । Bhavasvāmin on NMS,3

198. द्रोहो जिघांसा, धनवनितापहारः, शत्रुपक्षपातः, मन्त्रभेदो वा ।

Aparārka on Yāj. II.96.

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- (iii) Abhisāpe : The cases of grave charges. It is explained by SC as uttering a sinful speech which is a kind of Pāruṣya (i.e. the cases of abuse and defamation). According to the SV it may mean threatening to kill, while the Aparārka explains it as killing a Brahmin.<sup>199</sup>
- (iv) Mahāpāpābhiyoge : See under Mahābhiyoge. The Vivādacandra observes that the ordeal should be employed particularly in the cases of Mahāpātakas, (even if there be proper witnesses) just to establish the higher innocence of the person.<sup>200</sup>
- (v) Mahābhiyoge : It has been explained, in general by Mit. as the cases valued for more than 1000 Paṇas. (according to SC, for more than 500 Paṇas) while Aparārka and Viśvarūpa take it in a broader sense i.e. the cases valuing more than 1000 Paṇas as well as the cases of grave sins.<sup>201</sup>

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199. (a) अभिशापः पापाभिर्ज्ञानम् । तस्य पारुष्यभेदत्वेऽप्यादरार्थं पुनर्वचनम् ।  
(SC p 93), (b) वधानुज्ञानम् (SV p 91), (c) ब्राह्मणवधे (Aparārka on  
Yāj. II. 99)

200. महापापाभियोगे समीचीन साक्ष्येन निष्कर्षार्थं दिव्येन निर्णयः ।

Vivādacandra quoted by DK p. 226.

201 (a) महाभियोगे वैतानी ल्युक्तम् --- एतानि चत्वारि दिव्यानि यणसहस्रादूर्ध्वमेव  
भवन्ति (Mit. on Yāj. II. 99), (b) अत्र महाभियोगे नियतदण्डस्य पञ्चशतादि-  
कार्षणायपहारेऽभिधानात्तदादिकार्षणसम्बन्ध्याभियोगो महाभियोगः (SC p. 236),  
(c) महाभियोगे महापातकाभियोगे (Viśva on Yāj. II. 95), (d) सहस्रादिपरि-  
-माणद्वयविषयो महापातकविषयो वा आक्षेपो महाभियोगः (Aparārka on  
Yāj. II. 95)

It will thus appear that Mit. essentially takes Mahābhīyoga as all civil disputes of grave nature, while Aparārka includes Mahāpātakas also, which normally do not come under civil or criminal law, though many of them happen to be cognisable offences included under 10 Aparādhās given above and could be classified under criminal offences of theft, adultery and heinous acts. The Mahāpātakas have however a distinct aspect other than the legal one i.e. the sin committed is to be washed by various expiations. Ordeal can be resorted in the cases of such guilts obviously for self-purification.

(vi) Steye : Theft means depriving a man of his wealth clandestinely or openly. It is of three kinds according to the value of the thing stolen i.e. trifling, middling and grave. It appears that ordeals were particularly recommended to detect the cases of theft. NMS Bhāṣya's explanation of the word Sandigdharthe given above makes it clear that the cases of theft were principally dealt with <sup>by</sup> ~~the~~ ordeals. We find that Tanḍula and Taptamāṣa are the two ordeals particularly recommended for the cases of theft. It will be clear from the tribal account collected in the Appendix-I, that most of the Indian tribes employ ordeals for the detection of theft, (and adultery). It is interesting to note that theft and adultery are the principal charges for which ordeals are used by the Indian tribes : This, in fact, appears to be the world phenomenon, because almost all the countries of the world are found practising ordeal for theft and adultery. (Vide ERE for the use of ordeal in various countries).

- (vii) *Strīṇām Śīlābhiyoge* and *Paradārābhimarṣaṇe* : for the cases of adultery and infidelity or the doubtful character of woman.

Investigating the chastity of woman by means of an ordeal is a universal feature. Use of ordeal for this purpose is particularly recommended by Nār.<sup>202</sup> obviously for the reason that no human proofs can satisfactorily prove the chastity of a woman. The provision by the Dh.writers has however a long term grasping effect on the Indian mind, which is enhanced also because of the illustrious example of Sītā clearing her character by entering into fire. The Indian tribes often resort to the ordeal for this purpose (Vide Appendix-I).

- (viii) *Saṅkāsu* - Ordeal is an ideal means in all cases of doubt - it is helpful in the legal matters when the ordinary means fail, while it is helpful in clearing doubts regarding the character of an individual. *Kośa* is particularly recommended for the charges of suspicion.

- (ix) *Viśuddhaye* or *Atmaviśuddhaye* : We have already observed that the divine means can be used for the legal purpose as well as for the popular one such as self-purification. Ordeals could be resorted to on personal grounds in which there is no litigation as such, but, in many cases self-purification also does not remain purely personal. It has to be proved in the public interest. Kāt quotes the view of Bhṛgu that persons facing public scandals should be tried by means of ordeals (such as *Tulā* etc.)<sup>203</sup>

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202. Nār.242.

203. Kāt.413.

Br. points out that a wise person should, in the cases of the charges of the greater or inferior sins, purify himself in the assembly, lest he may be considered as one connected with such acts.<sup>204</sup>

In public interest, therefore, we find in ancient India, that a person joining a post of higher responsibility used to clear his character by undergoing an ordeal. 'Madras Epigraphy Report 1915-1916 gives following interesting details regarding the working of the village assemblies.- in presenting accounts for audit by the assembly, each of these was to undergo ordeal of holding red-hot iron in his hand. If he came out safe and hence also pure, he would be presented with a Bonus of one quarter of the surplus. If on the other hand, he burnt his hand and hence was in default he would be fined to Kalañju without of course further bodily punishment.'<sup>205</sup>

Ordeal is recommended not only for clearing ones character but also for establishing ones trustworthiness (Visvāsasandhāne). This is particularly necessary in all joint undertakings and the concerns under partnership (Kriyāsamūha-kartṛtve) and may help in the disputes regarding the inheritance (Rikthinām Vibhāge). Kosa is particularly considered most suitable in all such cases.<sup>206</sup>

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204. महापापोयपापाभ्यां पातकेनाथ संसदि । योऽभिशप्तस्तत्क्षमते संयुक्तं तं विदुर्जनाः ।  
तस्माद्यत्नेन कर्तव्यं बुद्धेनात्मविशोधनम् ॥ Br. quoted by DK. p. 205.

205. R.K. Mookerji : Local Govt. in ancient India p.184  
206. Kāt. 415.

(5) Ordeal as a method :

(i) Ordeal, a means to an end.

After the inclusion of the ordeal as a means of proof in the lawbooks, we find that rules regarding its procedure are made more accurate and precise. Strict adherence to these rules for the execution of the trial is extremely necessary. Even the slightest deviation from the rules mentioned by the Śāstra might result into the failure of the trial. The ordeal must therefore be executed according to the śāstra laid down, otherwise it may not be able to achieve the desired goal.<sup>207</sup>

Ordeal comes under evidence(i.e. Sādhana). An important idea that has thus crept in is that the ordeal is after all a Sādhana meant for achieving the Sādhya. A natural corollary that can be derived is that the Sādhana can be tried again if the Sādhya is not achieved. Kāt. thus recommends a retrial of the ordeal if it fails to achieve its object.

The ordeal might fail because of various reasons :-

(a) The trial might not have been executed strictly according to the rules laid down by the Śāstra(Ayathoktapradattāni).

(b) The procedure may be followed correctly but the persons conducting the trial may not be duly qualified i.e. the ordeal, the Sādhana, might not have been handled by proper persons.

Ordeal conducted by foolish, greedy or wicked persons is bound to fail even if the whole procedure is followed correctly.

(Yathoktānyapi Mūrkhādibhiḥ dattāni)<sup>208</sup>

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207. Kāt.439.

208. Kāt.438.

We therefore find that these writers stress that the ordeal must be conducted by the persons expert in conducting the trial (Divyavisāradaiḥ). Every minutest activity of the trial is to be carried out by an expert. e.g. In the fire ordeal, one is required to heat the iron-ball. Heating of the iron must be done by an expert blacksmith who knows the technique of heating iron and who has got previous experience of its kind. Similarly we may require expert carpenters, braiziers, archers, runners, astrologers, priests, medicos and so on.

(c) The ordeal may fail because of technical difficulty. (Sādhānasya Vyāghāte) e.g. (i) the mechanical defect in the apparatus used e.g. the balance prepared for the trial may break at the eleventh hour. (ii) Unforeseen reasons e.g. the balance may not be able to indicate the correct positions of the scales because of a breeze of wind.

(ii) Retrial :

In all such cases, the Dh.writers have allowed a retrial.

We find two views regarding the procedure to be adopted in case of a retrial. According to some, the whole procedure right from the invocation of Dharma should be undertaken afresh, while according to others, the general rites preceding the trial need not be repeated again, only the trial part of the ordeal should be conducted again.<sup>209</sup>

Ordeal can be retried only once and not again and again. If the person fails second time in the retrial thus granted,

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209. Vide f.n.312.

he is supposed to have lost the case.<sup>210</sup>

(iii) No ordeal against any other ordeal :

An ordeal can be tried again if it fails because of the various reasons noted above, but once the decision is reached at, it stands final. No other ordeal can be tried against it.<sup>211</sup>

(iv) Ordeal : The General procedure :

The procedure of any ordeal can, in general, be divided into following heads - (a) The preparation required for the trial. (b) The rituals i.e. invoking Dharma and other deities and offering them oblations. (c) Trying the *Sirahpatra* - a leaflet containing the charges for which the person is tried. (d) Conducting the trial. (e) Declaring justice. (f) Offering felicitations to the innocent and awarding punishment to the guilty person. These points are discussed by us in the following chapter.

(v) Ordeal : Social belief or the Public Opinion :

Dh.writers have discussed all the technical aspects of the ordeal i.e. its utility, rules of application, procedure and so on. It is however possible to get an idea regarding the social belief or the opinion of the people in general regarding this method through the casual remarks made or the discussions undertaken by these writers.

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210. तदा पुनर्हरेत् । द्वितीये प्रयोगेऽपि संदेहे हानिरेव । पुनः पुनर्हरेदिति वचनाभावात् ।

VN P.165.

211. Anirdistakartrkavacana,5.



(a) Authority questioned :

Right from Manu, we find that the Smṛtikāras have discussed the origin of the ordeal and have tried to support it with a reasonable sanction or a proper authority.

The ordeal should be accepted, points out Manu, since they are known and practised by great sages (like Saptarṣi etc) and gods (like Indra who undertook various oaths to clear the charges levelled against him with reference to Ahilyā) since very ancient times. Vasiṣṭha also undertook such oaths before (the court of) King Paijavana. Vatsa also, charged by his step-brother, was not burnt by the Universal Witness (Jagataḥ spaśaḥ), the fire, in the Fire ordeal.<sup>212</sup>

Br. and Pit. point out that the ordeal has been created by Brahmā and is practised by gods and great sages (or the thoughtful persons).<sup>213</sup>

These sentences are explained by the commentators as the Arthavāda sentences meant for eulogising the ordeal.<sup>214</sup> These statements are, however, also directed against those who question the authority of such trials.

Viśvarūpa takes up following discussion in this respect. The Pūrvapakṣa objects to the discussion of ordeals in the Smṛti texts. 'The provision, for Divyas appears to be without proper authority', says the objector. It cannot be supported by the

212. Manu, 8.110, 116.

213. Pit. 2.

214. अर्थवादोऽयं पूर्वोक्तस्य शयथविधेः । Medhātithi on Manu 8.110

Pratyakṣa( and other proofs of knowledge) nor could it become the subject of ~~Sruti~~<sup>Sruti</sup>, because Sruti does not aim at giving readymade formulae, such as 'particular means could achieve particular ends.' If that is the case, how is it that the sruti recommends yāga for attaining Svarga? - counter objection'. The answer is - the point to be stressed here is not that of a particular means leading to a particular end. The scriptures, in fact recommend Svarga as a Kartavya, sacrifice comes in since Svarga cannot be attained without it. The ordeal can be supported by the Vedas since it is meant for purifying the persons.

Should, then, ordeal be treated as Prāyas'citta (which is recommended by Sruti as a Kartavya) meant for purification? - Yes, but that can be only one aspect. There is a difference between the two. Prāyas'citta is a purificatory rite meant for observance only and is limited to the self. There is no legal dispute about it. The ordeal can prove legally that a person is pure(innocent) and not guilty(Aduṣṭavyavahārasiddhiḥ). The ~~practice~~ practice of ordeal can thus be proved by the Sruti pramāṇa.<sup>215</sup>

(b) Suspicion regarding the Validity of the trial :

The ordeal cannot be supported on rational grounds. In fact, they can't work at all. How is it possible, asks the objector, that the fire will not burn or the water will not plunge the person even if he be innocent? The great elements (Mahābhūtāni) do not deviate from their natural course of action.

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215. Vide Viśvarūpa on Yāj.II.113.

Secondly, an ordeal may be found violating its natural way of declaring justice because of the uncertainty in the method itself or because of frauds. As such, the guilty may escape unhurt and innocent may be found burnt. How are we to rely upon these methods?<sup>216</sup>

Medhātithi (800-850 A.D.) who tries to evaluate the merits of the method on objective basis, has to face abovementioned objections of the Pūrvapakṣa. Before we go through the answers given by him we must point out here that the objections raised here by the Pūrvapakṣa are not just of kind of those undertaken for Sāstric discussions, but are real, reflecting the general feelings of the ~~problem~~ people of the time. We can conclude this on account of similar references available in contemporary literature. The objection raised by the objector is very nicely reflected by Bhavabhūti in his famous Uttararāmacarita in a speech uttered by angry Janaka questioning the authority of Agni to test the chastity of his daughter Sita.<sup>217</sup>

As regards to the first objection, Medhātithi points out that the question posed is simply inaginary. The ordeal has worked efficiently in the past. There are historical examples of Vatsa and others who have tried such tests with success and the trials have served their purpose of deciding the truth.

As far as the question of violating the natural way of declaring justice or that of fraud is concerned, Medhātithi

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216. Medhātithi on Manu 8.116.

217. कोऽयमग्निर्नाम अस्मत्प्रसूतिपरिशोधने । Uttararāmacaritam IV.10.14.

points out that such violation or fraud is always rare. That is not the natural phenomenon of the test. We must know that every rule has its counter-part i.e. possibility of its being violated. Perception has been accepted as a means of knowledge inspite of the fact that there can be a wrong or defective perception. We can only say that, a rule cannot violate, that which violates cannot be a rule or the method that is accepted. A Śāpatha cannot violate; that which violates cannot be a Śāpatha. Now, we may find apparent contradiction in the result i.e. the guilty may come out unhurt and the innocent may be convicted, but this should be explained as follows : The guilty may come out safe in the trial because of his many pious deeds in the past birth. The innocent may, likewise, be convicted on account of his sins (Doṣa) in the former births. After all, the results of our deeds in the past births manifest by dictating themselves in mysterious ways. As far as fraud is concerned we must note that such frauds are not natural with the trial and that other proofs such as witnesses etc. also are not free from frauds.<sup>218</sup>

We thus find that the Dh.writers have brought out objectively the merits of this method before masses and have tried to affirm their faith in this useful means of proof. The suspicion of the people regarding the validity of the trial and the faith reinvoked and confirmed in the minds of the people by the Śāstrakaras, is also depicted by Śrīharṣa in his Naiṣadhīya-caritam<sup>219</sup>.

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218. Medhātithi on Manu.8.116.

219. Naiṣadhīyacaritam : XVII.87

(C) Fraud (Kuhaka) :

The Dh.writers have, with growing concern, cautioned and advised the king to act against the malpractices creeping in the trial. There can be a fraud in the trial in two ways: through the person conducting the trial and through the person undergoing it. The Sāstrakāras have asked the king to hold all trials conducted by unauthorised (i.e. other than Prādvivāka) and unqualified persons (such as foolish ~~not~~ or greedy persons) as void. The trial is rendered void if it is undergone by deceitful person. The word Kuhaka has been explained by Asahāya as a person who brings the whole situation under the influence of some mantra or medicine (and thus nullifies the effects of the trial)<sup>220</sup>. Kkh. points out that the person holding steadfast the effects of the trial through black magic (Āsurakāih mantrāih) are the worst thieves or the thorns of the society and should be sternly dealt with by the king. They should be expelled from the kingdom. The person who takes false oath goes blind in the house of his enemy. The ill-thought person opens the door of Raurava hell for himself, the Purāṇa points out.<sup>221</sup>

(D) Is more useful, must be used with reservation :

Asahāya<sup>220</sup> is probably aware of the limitations of this otherwise very useful method of deciding truth. He therefore advises people to protect it from its cheaper use. Commenting upon a stanza of Nār. who mentioned at one place only two proofs-witnesses and documents - to decide doubtful cases of the quarreling litigents, Asahāya points out that the sage has recommended here

220. कुहकः मन्त्रोपध्यायुपायाश्चयावदशीकरणकली । Asahāya quoted by

221. Kkh. 44.21-23; 6.

only two proofs - witnesses and documents - for the purpose, but he has not recommended the third one i.e. the ordeal even-though it has more merits simply because of the fact that litigation in courts, is a matter of common place occurrence, going on like a flow of water. It is of varied nature, divided into eighteen titles of law in which justice is required rather immediately for which quick and easy methods like witnesses and documents are always good and beneficial. The ordeal has an elaborate procedure and is to be used for higher purposes only. It results in more serious punishments. These trials are thus required to be used with reservation.<sup>222</sup>

(e) To undergo an ordeal - a Socio-religious duty, gives prestige.

Sukraniti stresses the importance of this method by pointing out that it has been accepted by the seven sages to purify themselves and is resorted to by Vasiṣṭha and others. The person who does not accept or agree to undergo the ordeal out of self-pride is in fact stealing(destroying) Dharma. Gods take away the merit(Dharma) and money(Artha) of the person- the Brahmin- who with his poor knowledge (i.e.self ignorance) is not prepared to undertake an oath even when he is required to do so. On the contrary, if a person desirous of self purification offers

kim222 अत्र वादिप्रतिवादिनोः परस्परं विवदमानयोरेकतरस्यापि दोषेण योऽर्थः  
 संदिग्धः भूतः तस्य संदिग्धार्थस्य विशुद्ध्यर्थं स्फुरीकरणार्थं लिखितं साक्षिणश्चैव  
 द्वावेव विधी मुनिनाऽत्र प्रकीर्तितौ । न तु सत्याधिकगुणमापि तृतीयं दिव्यम् ।  
 तथा तोयगतिसंततनित्यप्रवृत्तस्थादादृशपदोपलक्षितलोकसंयवहारस्य या  
 शीघ्रसुखोपायसाधनभूता मानुषी क्रियैवैषा साक्षिणोऽखितपूर्वा तावान्निलोपयोगिनी  
 या पुनर्देविकी क्रिया सातिमहत्सु- एव प्रयोजनेषु महतैव प्रारम्भेण परिक्षीणोप-  
 श्रयमहादण्डस्वरूपा भवतीत्येतदर्थं साक्षिणोऽखितत्वेनात्र श्लोकं गृहीतवानिति ।

Asahāya quoted by DK pp217-218

himself promptly (atandritah) to this method of investigation and comes out successful, he attains fame (in this world) and bliss in the heaven.<sup>223</sup>

Dh. writers classify ordeal under Dharma which gives divine justice. It declares innocence - par excellence - of the person who undergoes it successfully. These writers ask the king to felicitate the person who is successful in the ordeal. It thus becomes a matter of prestige for the person undergoing the trial.

Conducting the ordeal is also a matter of prestige for the king himself since that is an act promulgating Dharma. King Mādhavavarman (575 to 600 A.D.) of Viśvakunḍin administered various ordeals from this point of view. Candrikā (or Candrāvati) the queen of Lakṣmīdhara of the Raṭṭa family proved her chastity through ordeal. Persons joining higher posts offered to undertake ordeal in public interest. We get many historical examples, which show that the persons have willfully offered to undergo the ordeal which has become a matter of prestige for them. Tribal information also points out that the person undergoing ordeal successfully attained prestige in his society.

(6) Judgment derived from the ordeal :

We have seen that the legal procedure is divided into four stages i.e. Bhāṣā, Uttara, Kriyā and Nirṇaya. After the case is admitted in the court and due reply is sought from the defendant, the judge, alongwith the other members thinks of

The proper evidence required, evaluates the evidence that is produced and releases the judgment.

The Judgment or Nirṇaya is of four types i.e. based on Dharma, Vyavahāra, Caritra and Nṛpājñā or Rājasāsa<sup>224</sup>. Each of these is again divided into sub-varieties and is always powerful than its preceding variety. Thus Vyavahāra is powerful than Dharma and so on.

#### Dharmanirṇaya -

The Dharmanirṇaya is essentially based on truth i.e. it is the nirṇaya in which the wrong doer admits his guilt or wrongdoing on his own accord and the plaint of the plaintiff is met with without his being required to undergo the proceedings of the court by means of evidences etc. It is also a Dharmanirṇaya when the judgment is derived by an ordeal, because in ordeal also the main idea is to encourage the accused to tell the truth <sup>on</sup> and his own initiative.

#### Vyavahāranirṇaya -

The Vyavahāranirṇaya is one in which the litigation is fought out in court by citing witnesses and other proofs. Obviously in this nirṇaya (as well as in the two varieties following) the truth is derived on the basis of the evidences available.

#### Caritrānirṇaya -

The Caritrānirṇaya is one in which the decision is mainly based on the usages of the country, village or the family. Caritra also means circumstantial evidence or a *num anumāna*. It will



appear that usages are means of decision in certain cases apart from the question whether they are supported by the Smrtis.

Rajasāsana -

When the king issues in matter of dispute an order which is not opposed to the Smrtis or local usages and which is thought out as the most appropriate one by king's intellect or which is issued to decide the matter when the authorities on each of the two sides are equally strong it is a decision by Royal command.

'Trial by ordeal was one of the principal features of Hindu jurisprudence' - observed A.Dubois. The four types of judgment discussed above are very helpful for us in understanding the basic principles of Hindu law, which thus stress the need for arriving at the truth at the culprits' initiative - the ethical truth reflecting the inner conscience of the culprit - the concept on which any law should be based. The legal truth as contrasted with this Dharmanirṇaya is after all a matter to be adjusted - befitting the goals and ideals that are considered to be necessary and fit for making it possible for a human being to live an honourable and justified life in a disciplined society.

Dharmanirṇaya, which comes first, is the ideal concept, most desired to be achieved. Mundane needs are however primary with the human existence itself and are always satisfied with preference to the desired ideals. The Hindu jurists have, as

we have seen above, always given preference to the Vyavahāra-nirṇaya - the judgment based on human proofs - but they have never lost sight of the ideal, the Dharmanirṇaya - for which ordeal is adopted - a method firmly believed in - a deep rooted custom of the people, by the people and for the people.

#### Technical aspects -

We have seen that various aspects of ordeal are made more clear and accurate after developing it in its full legal context. Following points of legal accuracy may be noted with reference to the judgment derived from the ordeal.

(i) Śīrṣaka - We have seen above that the person making allegations, insisting upon the accused's undergoing the trial - should assure by means of Śīrṣaka, a bond, that he would bear the responsibility of punishment, in case his allegations are proved to be false. The Śīrṣaka is thus important which helps the judges to take action against false allegator.

(ii) Mantras recited - We find that the Prādvivāka who conducts the ordeal and the accused person who undergoes it, address the deity of the ordeal with various Mantras. The former asks the deity to act in a particular way if the person to be tried is innocent and do it otherwise if he is guilty. The accused person also, on his part, requests the deity to declare its wishes in the said manner. It is important to see that the Mantras addressed by both, the Prādvivāka and the accused person contain the signs of the success or the failure that are to be considered for the judgment, and the individual declaration of the same

by the two parties i.e. the persons conducting the trial and the person undergoing it - is of utmost legal significance. Such individual declarations have mutual binding over them. The person undergoing the trial is thus legally bound to accept the result of the trial.

(iii) Sirahpatra - A letter known as Sirahpatra is tied on the forehead of the person undergoing the trial.<sup>225</sup> It contains following matter :-

- (a) The actual charge for which the person is tried.
- (b) The famous stanza *Ahaśca Rātrisca Ubhe Ca Sandhye etc.* which in short means that all the universal things are watching the deeds of man etc.
- (c) The Mantras with which the person addresses the deity of the ordeal. These mantras contain the signs of the success or the failure of the trial.

The Sirahpatra thus becomes an important legal document which helps the judges in interpreting the results of the trial. Introduction of Sirahpatra advances the legal status of the ordeal. It speaks of the high legal accuracy with which the instrument of ordeal was utilised and interpreted.

We find many historical examples which show that the rules given by the Dh.writers were followed accurately by the people. During the Maratha period, the letter thus tied on the forehead of the person was known by various names such as *Bhāṣāpatra*, *Bhākhāpatra*, *Siropatra*, *Chīrapatra* or *Bhālapatra*.

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225. It must be noted that a similar parchment was tied in Greek ordeal also. (ERE Vol.IX pp.521 )

The statement mentioned in the latter was interpreted very accurately and the ordeal thus tried was supposed to prove only the fact which was mentioned in the statement.<sup>226</sup>

(iv) The result to be watched by many persons -

Dh.writers insist that the ordeal must be conducted publicly. The digests point out that it should be executed in presence of many persons. The king is asked to appoint experts in ordeals to conduct and inspect the proceedings of the trial. Besides these officials, we find that learned Brahmins, respectable dignitaries - persons who are pure and without any greed( or self interest) - who witnessed only facts, should be invited to witness the execution. These persons should report their observations. The king should release the judgment prepared by the Prādvivāka on the basis of these observations.<sup>227</sup>

Jayapatra -

The Jayapatra should, according to the Dh. writers contain brief statement of plaint, reply, evidence produced discussions therefore, arguments, Smṛti texts applicable opinion of the Sabhyas, decision and relief granted; should

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226. Vide the case of Kānhojirao Shirke VS Deojirao Shirke quoted in Chapter VII.

227. Pit. 60-61.

should

should be signed by chief justice and bear royal seal.<sup>228.</sup>

Felicitating the innocent, punishing the convicted :

The king should decide the judgment of the ordeal on the basis of the signs of the success or failure in the trial, discussed by the <sup>Sās</sup> ~~śā~~strakāras. [We have discussed these signs of the success or failure of each of the trial in the following chapter].

Accordingly, the king is advised to give the Śuddhipatra (document declaring the innocence of the person) to the innocent and felicitate him with due honour. He must be adored by offering Sandle-wood paste, garlands, garments( and other presents) to him.

228. Jayapatra granted by Hindu court of Mithilā in Śaka 1716 (1674 A.D.) strictly conforms to the rules of procedure laid down in the Smṛtis and Nibandhas and is couched in dignified, technical and scrupulously formal language. It related to the ownership of a slave girl. Plaintiff at first made default in appearance, the judgment notes this and also refers to the restoration of the suit. The defendant raised an objection that a single witness to prove the matter was inadmissible. This objection was upheld. Then plaintiff prayed that he might be allowed to undergo an ordeal, but his request was disallowed as human proof was possible and plaintiff ultimately lost his suit. The judgement is written and signed by Sakalamisra who was the chief justice and is addressed to other members of the sabhā called Dharma-dhyakṣas and Pandits, seven of whom express their concurrence (Sammati) at the top of the documents. (Kane - Hist.of Dh.Vol.III p.381)

The guilty person should be punished according to the rules. Punishment for the person whose guilty is proved through an ordeal, in general consists of the payment of fine and banishment from the state. All the writers point out that the person convicted in the ordeal should be banished after recovering due fine from him.

Kāt. gives us the amount of the fine to be paid by the person convicted, which according to him should be adjusted according to the method by which the guilt of the person is proved. Thus, if the guilt is proved by the Poison ordeal, the person has to pay 1000 (Panas); for water ordeal he has to pay 600 (Panas) for Agni 500, for Tulā 400, for Kosā 300, for Taṇḍula 200 and for Taptamāsa 100 Panas. This specifies the special fine to be paid on account of defeat by the ordeal in addition to the fine laid down for the defeated party by Manu, observes Dr. Kane.<sup>229</sup>

Vṛddhahārīta recommended physical punishment for the person convicted in the trial. According to him the tongue of the person must be cut if the ordeal declared his guilt.<sup>230</sup>

Kāt. has asked the King to recover 50 Panas from the innocent person.<sup>231</sup> SC observes that this should refer to the person whose innocence is proved through ordeal. Dr. Kane explains in his notes that the 50 Panas that the innocent person has to pay is not a fine but is in nature of return (modern court fee) to the state for the services of judge etc.

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229. Kāt. 460-61 and Dr. Kane's notes on these stanzas in Kātyāyana-Smṛtisāroddhāra.

230. Vṛddhahārīta, l.

231. Kāt. 459.

(7) Divination in Dh. ordeals -

Ordeal is a method in which the judgment is declared through divine agency. Principle of divination is thus found working at the basis of the trial. Discussing the omens and portents of the Indian people, mainly drawn from the Kausika Sūtra, G.M. Bolling points out following general features of the vedic divination.

- (i) A religious or quasi-religious ceremony is necessary to impart efficacy to the apparatus.
- (ii) The general principle upon which most of them rest is the idea that an association being established between two questions, the answer to the one will be the answer to the other or that the person can answer both correctly who can answer one correctly. This is but a particular application of the fundamental principles of magic that the part may be substituted for the whole and the objects connected in any way eventhough nerely by an association of ideas constitute whole..... In some cases the ~~ix~~ indication of success is the occurance of what we would term a miracle. This idea is employed in serveral forms of ordeals.<sup>232</sup>

Ordeals in Dharmasāstra are fully influenced by the characteristic features of the Indian Deities and the science or the procedure of worshipping(Pūjāvidhi) them.

- (i) Before worshipping any deity the person is required to purify himself. The person undergoing an ordeal is also

accordingly asked to observe various purificatory rites such as observing fast, taking bath with ~~xxx~~ clothes on and so on. Prādvivāka who conducts the trial also should observe these rites.

- (ii) Dharma is the principal deity of the ordeal in general. Dharma alongwith host of other deities is invoked and worshipped with what we may technically call as Ṣoḍaśo-pacāra pūjā. It is followed by certain Homas.
- (iii) The object of the ordeal is treated as the main deity of the particular test that is undertaken e.g. Dhātā is the main deity of the Balance ordeal. Agni is the main deity of the Fire, Taptamāsa, and Taptaphāla ordeals, Jala of the Water ordeal, and Dharma and Adharma of the ordeal of Dharmādharmau. These deities are requested to declare their dictates in the matter of dispute that is to ~~the~~ be investigated. The eulogistic stanzas with which these gods are addressed are gradually found increasing in number. These gods are described as abodes of truth, omnipotent and omniscient.

#### (8) Stages in the development of the Dh.ordeals -

Method of ordeal was a deep-rooted custom of the people. It was practised by the people in small groups in which the accused person underwent some kind of test. Dh.writers accepted it as a means of proof.

Dh. writers give us law which is advanced one. Even GDS, the oldest of the Dh.works known to us, reveals a developed system



of law. It has been pointed out above that Maskarin the commentator of GDS makes an essential difference between the legal oaths and the popular oaths. There are no specific rules regarding the place of ~~don~~ conducting the trial etc. for the popular oaths. It must be pointed out that the Dh. writers accept and discuss only the legal oaths i.e. oaths used in a legal suit which is required to be executed at a definite place, in a definite form.

Examples referred to by Manu and those available in the old vedic literature show that these tests were conducted in small social groups as per local conventions.

In earlier times we find that ordeals were conducted locally i.e. the accused person used to undergo the trial in presence of some persons either in some temple or in royal or Brahminical assembly, but the whole affair was limited to the person undergoing the trial, but gradually the ordeal was becoming more public i.e. the king, government or the people at large were also involved in these tests.

From the point of view of the form of these methods, we find that oath is just a verbal declaration. It was developing into ordeal i.e. more physical, more concrete. If we study the history of ordeals in general, we find that old drastic trials have tended to be milder in their forms during the course of their evolution and particularly with reference to the Indian ordeals we must say that the Dh.writers have actually made them as mild as possible. The discussion of each of the ordeal in the next chapter would clearly show that none of the Dh. ordeal is that way risky and is humanly safe to undergo. The Indian

jurists are in fact thus to be credited for a deeper insight, who judging the utility of these trials not only accepted them as a means of proof but disciplined them to a standard variety which would essentially be safe but efficient enough to put the accused person under a great physio-psychological test. Right to live has been thus accepted in promulgating these ordeals.

We have seen above that definite history of the evolution of law proper starts in India with the emergence and growth of king as judge. According to an important amendment made by the Dh. writers, the ordeal was handed over to the king. It was thus the duty of the king to see that the ordeal is conducted properly. This important change is first indicated in the verse Sacailam Snātamahūya etc. (Viṣṇu IX.33, Yāj. II.97). ~~Variety~~ Varient readings (deva and Nṛpa) in this verse really speak of the changing state of affairs. All the later writers clearly point out that it is the duty of the king to execute ordeals properly.

After taking over of the ordeals by the king, execution of the trial becomes a government's responsibility. Many persons are engaged and hosts of duties are allotted to them. \* Experts of ordeals' are deputed and the law is interpreted by its letter. Elaborate rules are framed and strict adherence to these rules becomes a necessity. This is revealed through the writings of Nār. Kāt. Br. and Pit.

A king can personally officiate as the head of executors or he may appoint an officer alongwith a team of learned Brahmins

or citizens to assist him. It has been however mentioned by almost every writers and mentioned so repeatedly so as to become a rule, that the Prādvivāka should conduct ~~to~~ all the activities of the ordeal on behalf of the king.<sup>233</sup>

Religious ceremonies and rituals added preceding to these trials form an important stage in the development of the ordeal. We have seen elsewhere that the world ordeals are found to have been influenced by priesthood in general and the Indian ordeals form no exception to it. Pit. has elaborated the religious aspect of these methods. The religious ceremonies have a natural psychological influence on the mind of the person undergoing the test. It thus turns the ordeal into a religio-psycho-legal test.

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233. प्राड्विवाकसभाख्या तु पृच्छतीति प्राड् विवेचयतीति विवाक इति व्यवहार-  
-मातृका.... आभेदास्तं पृच्छतीति प्राड्, तदनुरूपं दिव्यं विविनाक्ते इति  
विवाकः, प्राड्-चासौ विवाकश्चेति कर्मधारयः । DT. p. 583.