

C H A P T E R - II

NAME, NUMBER AND CLASSIFICATION OF ORDEALS

(I) Names or Words used for Ordeal :

Dh. Writers have referred to the ordeal or the divine methods with various names. These are Samayakriyā, Śapatha, Daiva or Divya. We also find words Kriyā and Parīkṣa used for these trials. A study of these words indicates various aspects of the divine methods. They also show a general development of the divine means of proof discussed in the Dh. works.

'Samaya' which happens to be one of the main sources of the Hindu law, essentially means a convention or a custom. The word Samayakriyā therefore means conventional methods. Viṣṇu who exclusively uses the word Samayakriyā³⁸ describes various methods such as holding the Dūrvā grass in hand (Dūrvākara), drinking the sacred libation (Kosā) and mounting Balance and so on. The word Samayakriyā is important to us as it throws light on one of the very important characteristics of the ordeal i.e. the customary importance of these methods.

The word Śapatha is derived from √śap (+Athan) and means a curse, an imprecation. The word Śapatha thus stresses an important aspect of the divine method. The method is practically useful because of the imprecation which forms the very essence of it.

Daiva or divya means an ordeal. The literal meaning of the word Divya is explained by Br. and Pit. as follows :- 'The ordeal

38. Viṣṇu VI-23, IX.1.

has been practised by gods and great sages as a means to settle all difficult and doubtful cases. It is known as divya because of this fact i.e. being used by gods and great sages for acquitting or purifying themselves (Divyāni = Devaiḥ prayuktāni).³⁹

The word Divya thus gives two important aspects of ordeal (i) It indicates the divinatory aspect of such trial. We must remember that divine intervention at a crucial moment in dispensing justice is the basic idea on which these methods are based. The Dh.writers have brought out this essential character of the ordeal in the word Divya. (ii) These methods are very old. These are used even by gods and great sages. Ordeal is an antique institution, a deep-rooted custom practised by the people since very ancient times.

Kriyā is a technical term used in the law-books. It means proofs. Kriyā relates with the evidence which includes various types of proofs. (Vide Chapter III). Use of the word Kriyā in the restricted sense of the ordeal is rather significant. It speaks of the role played by ordeals in the legal history. The problem of evidence has always dominated the scene in the judicial process. In the primitive stage we find that men spoke of proof and by proof they meant oath and ordeal (Vide Chapter VIII).

The ordeal is after all a test. Parīkṣa means a test. The word thus throws light on the trial part of the method.

Various words used for the ordeal by the Dh.writers are thus significant. They throw light on the various aspects of the divine methods.

(II) Number of Ordeals :

Dh.writers have accepted ordeals mainly as a deep-rooted custom. The earlier writers accepted them in principle as a means of proof and left the details to be worked out as per prevalent practice. They did not mention any ordeal by its name nor did they give any of its variety. Gautama as explained by his commentator however made a clear distinction between a legal oath i.e. the oath used for legal purpose and the popular oath.

Manu mentioned the methods of fire and water and touching the heads of son or wife.⁴⁰ Śaṅkha and Likhita give the ordeals of Mounting Balance (Tulārohanam), Eating poison (Viśāsanam), Entering the water (Apsu praveśah), Holding the Iron (Lohadhāraṇam), offering one's merits acquired by sacrifices and charity (Iṣṭāpūrta-pradāna) and other oaths⁴¹. Viṣṇu recommends the oaths of Dūrvākara, Tilakara, Rajatakara, Śvārnakara, Siroddhṛtamahīkara and Kosa, and ordeals of Balance, Fire, Water and Poison.⁴² Yāj. gives the five ordeals - Balance, Fire, Water, Poison and Kosa⁴³. He refers to Phāla but does not give any details about it.⁴⁴ We see that Viṣṇu and Yāj. have standardised these five ordeals. They have discussed them in all their aspects.

We find that other ordeals are gradually added to this list following their recognition by the subsequent writers.

Nār. thus gives the ordeals of Rice and Hot coin (Tandula, Taptamāṣa)⁴⁵. Kāt. refers in general many popular methods (Laukiyāḥ

40. Manu 8.114

41. SL 3

42. Viṣṇu IX.5-11

43. Yāj. II-95

44. Yāj. II-99

45. Nār. 337ff, 343ff.

kriyāḥ) coming up⁴⁶, while ~~many~~ Br. and Pit. complete the list of nine ordeals by adding ordeals of Taptaphāla and Dharma and Adharma (Dharmādharmau), attributing the origin of all of them to the Svayambhu⁴⁷.

After this, we find many minor Smṛtis. These Smṛtis have not contributed any new form of ordeal. Next follows the period of the commentators and digest-writers. In this long period, numerous writers have devoted a good deal of discussion on the topic of ordeals, but their main aim was to explain the texts and as such, they also did not add any new form of trial. We thus find that the list of nine ordeals given by Br. and Pit. stands final.

If we study the ordeals practised by the people of India, we find that there were some local varieties developed here and there, but in general, the nine ordeals given by the Dharmasāstra were the most standard varieties of the sort and were maintained intact by the people by conducting them as per Dh.recommendations.

Scholars are divided in their opinions as regards to the age of the prevalence of these ordeals. Scholars like Bühler and Jolly opine that it is possible that the nine forms of ordeals mentioned in the later smṛtis existed in India from the earliest times. These scholars base their conclusions on the Vedic passages which according to them refer to the method of ordeal, as also on the recognition of the Daiva proofs in the Āp.D.S. As opposed to this, we find scholars like Hopkins,

46. Kāt.421

47. Br. 10-11.

Stanzler, Schlaigintweit and Kaegi who hold that fire and water ordeals were first used and then came the elaborate trials by Balance and other ordeals.

Hopkins agrees with Buhler and Jolly only with a part of their proposition. 'As the Sūtras do not notice ordeals except for a general recognition of them as divine proofs and as later writers Yāj. and Nār. describe five ordeals adding Ploughshare, Scales and Poison; it is reasonable to conclude that Manu stands in time, as in description, midway between the two sets of authors and is first to describe ordeals already known and practised. This is the judgment of Bühler and Jolly, but the implication that the mention of Daiva in the older literature makes probable the existence of all the forms of ordeal mentioned only in later literature is not safe. Fire and Water were first used, then came elaborate trials with Balance etc. till eventually there were nine formal ordeals...

'When Prof. Jolly says that no one of them can be judged later than any other on the ground that the growth from two to five and then to nine ordeals does not necessarily imply that one named later did not exist before two named first, he exaggerates the probabilities. Is it likely, for example, that the ordeal by Dharma and Adharma is as old as that of Fire and Water?⁴⁸

We may observe in this respect that (i) The references sought to be as of ordeals in the various vedic passages are very vague. They do not clearly and doubtlessly refer to the ordeal. (ii) The ordeal described in the Chāndogya Up. indicates the primary stage of the fire ordeal described in the Dh. works.

48. Rapson : Cambridge History of India, Vol. I. p. 283.

(iii) Recognition to the nine ordeals in the Dh.works came only gradually. The nine ordeals could not be supposed as belonging to the same old period. Rules of application as well as the operational aspect of these methods show that they belong to a much advanced stage. It is true that Br. and Pit. ^{mention} ~~attribute~~ all the nine ordeals as directed by Svayambhu, but this must not be taken literally, but only as an Arthavāda meant for glorifying these ordeals.

The stanzas are however important for two reasons (i) They ascertain the order of the nine ordeals. (ii) The order, in a way, happens to be the chronological order of the recognition of the respective methods.

(III) Classification of Ordeals :

We can distinguish these various methods into three main groups suggested by the Dh.writers i.e.(i) The Oaths, (ii) The ordeals and (iii) The popular methods.

The methods coming in the last group have a limited sphere. They are believed in by, and have an appeal over a section of people or a particular society. These methods are therefore sanctioned and often referred to by the Dh.writers as popular tests, but they are not officially recognised because of their limited scope. These methods do not come for regular discussion in the Dh.works.

The oaths and ordeals referred to in (i) and (ii) are based on a common principle of divine judgment. As such, there cannot be any essential difference between them. Methods as such,

however one could distinguish them, since they differ in their modes of declaring justice. We thus find that the nine ordeals from Dhātā to Dharmaja are technically distinguished from various oaths.⁴⁹

The nine ordeals are primarily divided into two groups. The two groups are referred to as Tulādīni (Balance and others) and Taṇḍuladīni (Rice and others).⁵⁰ The first group consists of the five ordeals given originally by Viṣṇu and Yāj. while the second group consists of the remaining four ordeals. The group of five ordeals is often referred to as Divyapañcakam or Pañca-vidham divyam. These ordeals have received a special treatment, even at the hands of the later writers who themselves have added new ordeals. It is interesting to note that the five ordeals are discussed by all the writers - the older and the later- in all their aspects (particularly their consideration from the point of view of the caste of the person undergoing the trial or that of season - is worth-noting), while the other ordeals are discussed only from the point of view of the seriousness of the charges and are mainly dealt with their procedures. The subsequent ordeals are thus not discussed in their full set on par with the celebrated five ordeals. They thus formed a sort of appendix to the original ordeals.

Amongst the five ordeals also, it will appear that the ordeals of Fire, Water and Poison form one group. In the cases of the other two ordeals i.e. the Balance and the Kōśa, we find

49. धातव्यो धर्मजान्ता सत्र नोक्ता मनीषिभिः। तत्र शोधयश्च शपथैराभियुक्तस्तु मानवः॥
Smṛtyantara quoted by DK

50. तुलादीनि कोशान्तानि पञ्च दिव्यानीह धर्मशास्त्रे विशुद्धये संदिग्धव्यर्थस्य संदेहनिवृत्तये
दातव्यानीति। अन्यत्रान्यान्यपि तदुल्लादीनि दिव्यानि सन्ति। Mit. on Yāj. II-96 P. 442

that the latter happens to be a sort of a Śapatha. It is used for minor cases, even Śirṣaka, the primary requirement for adopting any ordeal is not required for it, while the Balance is mainly developed as a model ordeal. Both these ordeals are used for the weaker section of the society. They are not dreadful at all, the prohibition of seasons in the cases of both the ordeals is relaxed and they are thus made available for all the persons in all the seasons. (Vide discussion on Dhātā and Kōśa ordeals in Ch.V).

Out of five ordeals, we thus get Fire, Water and Poison sorted out separately. These ordeals are used only for strong and stout persons.⁵¹ Consideration of seasons relates only with these three ordeals.⁵² Element of fear, which is an essential part of the ordeal is well maintained in all the three ordeals. Out of these three, Fire and Water represent natural phenomena. It was in fitness of the things that ancient man submitted himself before Nature in these so called divine tests. Fire and Water happen to be the primitive and most ancient of all the world ordeals. It is interesting to note that the Indian tradition also refers to these ordeals as the most ancient ones, while the Poison comes next. The Indian Poison ordeal naturally befits or comes in natural succession with these two ancient ordeals representing the phenomena of nature, since, the poison recommended by the Dh.writers is (The one available in the Śṛṅgī plant) - derived from plants. The poison ordeal can therefore be called as derived from nature. All the three ordeals, the foremost of the Indian ordeals, thus form one group.

51. Pit.11.

52. तेनाश्वम्बुविषाणामेवर्तुतो ऽयवस्था | SC pp.242-243

It is thus possible to analyse the nine ordeals in the following groups :-

1) Fire and Water - represented the natural phenomena.	}	The Powerful Ordeals.	The set of five ORDEALS	THE NINE ORDEALS
2) Poison - derived from nature.	}			
3) Balance - developed mainly as a model ordeal.	}			
4) Kosa - The mildest ordeal meant for universal application.	}			
5) Tanḍula and Taptamāṣa	- added by Nārada.	} added subsequently.		
6) Phāla and Dharmaja	- added by Br. and Pit.			

The

Attempts have been made to classify these ordeals on the basis of their forms. Sukranīti thus gives Fire, Poison, Balance, Water, Dharmādharmau and the Śapathas as the main types.⁵³ Various ordeals could be brought under these groups as follows :-

- 1) Fire ordeals : i) going through the nine circles with red-hot-iron-ball in hand.
 ii) Walking over the burning charcoals,
 iii) Lifting up a piece of iron from the boiling oil.
 iv) Licking the red-hot iron bar with tongue

53. Sukra - IV.730-737.

- 2) Poison ordeals : i) Eating the poison.
ii) Taking out a black serpent from a pot.
iii)
- 3) Balance ordeal : i) Weighing the person in the scales.
- 4) Water ordeals : i) Drinking the water in which the desired deities are bathed.
ii) merging into the waters for the recommended period.
- 5) Dharmādharmau ordeals. : i) Taking out unknowingly either of the images of Dharma or Adharma.
ii) Chewing the consecrated rice grains.
- 6) Sapathas : i) touching the feet of the honourable persons or touching the head of Son or wife.
ii) Swearing truth by touching wealth(money).

The exclusive attempt made by Śukranīti to classify the ordeals in this way is in fact much desirable, though the classification itself, it may be observed, is rather done superficially. We thus find that Jala and Kosa are brought here together only because both of them relate with water, but the two forms have rather different basis. The water ordeal has an aspect of undergoing a physical test as such, while the Kosa is mainly based on the fear of god - a principle common to all ordeals - made more direct and personal. Tandula is similarly put under Dharmādharmau - the method based on chance. Tandula is in fact modified Kosa. (Vide discussion of Tandula-divya-Ch.V). Chronologically also it comes next to Kosa. The Kosa and Tandula should thus come under one group. The Taptamāsa and Taptaphāla which come next from one

group. Curiously enough, we find that both the ordeals were recognised and admitted in the Dh.system in the same period. Taptamāṣa is recognised by Nār. and Taptaphāla is specially developed by Br. Both these ordeals are the most popular world ordeals and we do not know if they came to India from outside. It is however interesting to know that out of these two ordeals, Taptamāṣa became the most popular ordeal of India. From 12th or 13th century it started attaining prominence and soon became the ruling ordeal in India, while Taptaphāla was thoroughly discouraged and neglected. It lost its identification altogether. Ordeal of Dharmādharmau which comes next is a curious ordeal. That way, all ordeals are based on the principle of divination, but Kośa, Tandula and Dharmādharmau are the three ordeals in which divination is personified and made more direct. In the first two, we find that the object of the ordeal is brought in direct contact with some deity, while in the last we find that Dharma, the presiding deity of all the ordeals is personified and engaged in an independent ordeal (by counter-balancing it with Adharma). We can thus call it 'an ordeal of the god of ordeals', process of divination in which is raised to a higher geometrical progression. The ordeal is based on the idea of chance and can therefore be better grouped with Tulā (Balance). There is also another reason which makes us these two ordeals bring together. Both are typically Indian ordeals specially developed by the Dh. writers. Tulā, as we have seen above, is developed as the model ordeal while Dharmādharmau is developed out of efforts to enhance the role of divination. We can thus re-classify these ordeals as follows :-

'A' (i) Fire and (ii) Water : oldest world-ordeals based on
the phenomena of nature.

(iii) Poison : derived from nature.

'B' (iv) Kosa and (v) Tandula: brought in direct contact with
some deity.

'C' (vi) Taptamāṣa and : developed by Nār. and Br.
(vii) Taptaphāla

'D' (viii) Balance and : specially developed by the Dh.
(ix) Dharmādharmau : writers.

Sukranīti has introduced these ordeals as known and practised by the people and it is true that barring few forms (e.g. the Dh.writers have not given the ordeal of walking over burning charcoals) they are not contradictory to the Dh.methods. But we must observe that Sukranīti is not technically a Dh.work. Its classification cannot be supported by the Śāstra as it does not fit in the Śāstric frame-work.

It must be observed that SC also brings Agni, Taptamāṣa and Phāla ordeals under one head calling them as fire ordeals, but this arrangement is just meant for the convenience of the discussion. ~~The~~ All the Dh.writers including the author of SC have treated all these forms as distinct ordeals. It must be added to the credit of the Dh.writers that the distinctness of the three ordeals advocated by them finds accordance with the classification of the world ordeals made by the modern writers who take Fire ordeals, Boiling oil ordeals and Hot-iron ordeals as distinct forms.

It will be in fitness of the things to take here a review of the Indian ordeals in the light of the world ordeals. Ordeal has been practically universal. 'From France to Polynesia, from Scandinavia to furthestmost Africa, there is perhaps no country in the world' which has not made use of some test of such a kind.⁵⁴ The general methods of the ordeal used by the world - community may be summarised ~~here~~.

(1) Poison Ordeals : This mode, predominant in West Africa, is closely connected with the prevalent phase of superstition viz. the belief in ~~wh~~ witchcraft according to which every death other than violent and every sickness is the result of evil magic.⁵⁵

As compared to this, we find that the Indian Poison ordeal is a well-thought method recommended after due consideration of the Āyurvedic functioning of the medium used. The poison recommended is completely harmless and there is no risk to human life in undertaking it. We may, in fact, point out here in general that the Dharmasāstra writers have evaluated the ordeal properly, which according to them is just a method of investigation and the person asked to undergo it cannot be allowed to die on that account. They thus accept individual's right to live. This point is specifically attended to in recommending all the trials. As a study-case, the poison ordeal may be pointed out here in particular.

(b) Pseudo-poisonous doses are frequently used in some cases. These are emetic, in others they act by superstitious auto-suggestion. Crawley brings the Indian Kōśa ordeal under this head.

54. Gustave Glotz : The ordeal and the oath, PLI p.610

55. ERE, Vol.IX pp.507-508.

In this method we find the active principle of superstitious fear.⁵⁶

Ancient and modern India and medieval Europe employed a test which depends upon the influencing of the masticatory process. The Rice ordeal may be noted as an example. The same ordeal is employed in Indonesia.⁵⁷

(2) Water Ordeals : The plunging of a litigant or accused person in a river or lake is one of the most ancient tests among the Indo-European peoples and by a curious revival also the latest to survive in Europe itself. Both in India and E.Indian Islands, the test has been employed of keeping head under water longer than adversary. This is a naively harmless ordeal.⁵⁸

(3) Boiling Liquid Ordeals : The natural action of the heated element is set here against the chance, infinitesimal but real, of escaping injury. Hot water or oil is the mode most frequent in primitive ordeals. The Hindu method was to ~~ma~~ take a Māsa weight of gold out of boiling oil.

(4) Hot-Iron Ordeals : The continued prevalence of this method in various forms is a remarkable feature of the history of ordeals.⁵⁹ The Indian Agni and Phāla ordeals come under this head. The Agnidivya ~~and~~ in which the accused person was asked to walk through various circles with red-hot iron ball in hand was much in favour in Teutonic and Scandinavian peoples. 'It is interesting that the principle of taking so many steps is found here as well

56. Ibid : p.508.

57. Ibid : p.508.

58. Ibid : p.509.

59. Ibid : p.509.

as in India', observes Mr.Crawley. Next to the wager of Battle, this ordeal had most elaborate regulations.

The ordeal of hatchat or that of Phāla was popular in many ancient countries. In this ordeal, the disputant licked a hot-iron spoon. The Irish employed the red-hot-iron adze in case of woman clearing her character. She rubbed her tongue on a red-hot-adze of bronze or melted lead. J.A.MacCulloch observes that the red-hot-metal ordeal is of wide occurrence among Arabs, Hindus and Chinese.⁶⁰

It must however be pointed out that amongst Dh.writers, only Br. has described this ordeal. It is in a way a neglected ordeal in the Dh.system. In practice also, the Indian people have not favoured it much.

(5) Fire Ordeals : Walking through a mass of burning fire is not an infrequent ordeal. The Iranians seem to have used not only the ordeal in which molten metal was poured on chest but also walking on fire. Siamese walk over a pit of burning over charcoals. In early Europe the hand was held in a fire or the person walked between two masses of burning logs.⁶¹

It must be pointed out that Sukranīti has referred to the method of walking through fire, but the Dh.writers have not recognised it.

(6) Ordeal by Combat : In this ordeal, the disputants fight with each other physically in which victory proves the justice of cause.

60. Ibid : p.515

61. Ibid : p.510.

The Homeric Greeks practised it. It was known to the Japanese. The Scandinavian and Teutonic peoples have chiefly exploited it.⁶²

In all Germanic races, judicial duel was the earliest procedure. In Norway, Sweden and Denmark the judicial duel was abolished by about 1100 A.D. In Iceland, the duel was abolished in 1011 A.D. In Ireland, duel was abolished in 400s. Among all Slavic people - Czeches, Russians, Poles etc, judicial duel was the primitive custom. In Poland, judicial combat had been usual. In Russia, in 900s the judicial duel was wide-spread.⁶³

'The judicial combats, the most senseless and bloody of the ordeals, gave place to the ordeals of Water and fire-practices more humane one might imagine'.⁶⁴

It must be pointed out that this ordeal was thoroughly absent in India. Dh.writers do not describe it.

(7) Miscellaneous Ordeals : Following Hindu ordeals are recorded in this group (i) The person stood on one leg which was fixed in the ground till one or other gave in. This ordeal is of course not recognised by the Dh.writers. (ii) A curious ordeal which can hardly be credited with any success due to influence upon nervous system is that of Balance.⁶⁵

(8) Ordeal by lot : The principle, of chance enters into many ordeals, in some it seems to be the main element. Following Hindu ordeals can be noted. (i) Ordeal of the ring and a living cobra, (ii) Ordeal of Dharmādharmau.⁶⁶

62. Ibid : p.510

63. Gabriel Tarde : Evolution of procedure, PLI pp.693-694.

64. Ibid : p.692.

65. ERE, Vol.IX.p.511.

66. Ibid : p.511