The Administration of Justice according to the Śukranitisāra

FOR the proper appreciation of a work like Śukrāchārya's *Nītisāra* it is necessary to bear in mind its antiquity to which I alluded elsewhere earlier.[1] It may not, however, be out of place to mention here again that Dr. Gustav Oppert, who edited this work in 1882, had been inclined to ascribe it to the period of the Smṛtis and the early Indian epics. Even according to this computation the *Nītisāra* is at least two thousand years old. The nature of the treatment of a subject like the administration of justice in a work of such antiquity is naturally a matter of great interest to the student of the Social Sciences.

The two primary kingly functions, according to the *Nītisāra*, are protection of subjects and the punishment of offenders (Ch. I, 27-28), as the wicked man is the destroyer of good, an enemy of the State and the propagator of vices (Ch. IV, sec. V, 3). But this punishment is not to be arbitrary, for, the king should punish the wicked by administering justice (Ch. IV, sec. V, 1). The justness of the administration of justice is safeguarded by Śukra in the following ways : (i) In deciding cases the king should be free from anger and avarice and dictated by the spirit of the *Dharmaśāstras* (Ch. IV, sec. V, 9-10). (ii) Justice to be administered through proper judicial proceedings with the help of the ten requisites[2] of the administration of justice (Ch. IV, sec. V, 7-8). (iii) In the unavoidable absence of the king (and therefore possibly in all cases tried outside the capital) disputes may be settled by *Brāhmaṇas* (appointed for such purposes by the king) but they are to be " versed in *Vedas*, self-controlled, high-born, impartial, unagitated, calm, religious minded, active, devoid of anger and those who feared the next life.[3] Though other things being equal,

1. *Vide Indian Journal of Political Science*, Vol. IX, No. 1, p. 31. The numerals in the remaining notes in this article refer to the lines of the Sanskrit text edited by Dr. Oppert, unless otherwise indicated.

2. The ten requisites of the administration of justice are, the king, officers, councillors, *Smṛti-śāstras*, the accountant, the clerk, gold, fire, water and one's own men (Ch. IV, sec. V, 72-73). The function of officers like the Chief Justice and Priest is to act as the king's councillors. The *Smṛtis* are to be used for recital of *mantras*, penances and gifts, gold and fire for taking oaths, water for quenching the thirst of the nervous. The function of the accountant is to count the money and of the clerk to take down depositions correctly (Ch. IV, sec. V, 77-80). A clerk who tampers with the depositions should be punished as a thief (Ch. IV, sec. V, 120-121). Śukra's recommendation, that clerks should be appointed from amongst the *Kāyasthas* (Ch. II, 862-863), raises an important question of Hindu Sociology.

3. *Yadā na kuryānnṛpatissvayaṃ kāryavinirṇayaṃ*
Tadā tatra niyunjīta brāhmaṇaṃ vedapāragaṃ
Dāntaṃ kulīnaṃ madhyasthamanudvegakaraṃ sthiraṃ
Paratra bhīruṃ dharmiṣṭhamudyuktaṃ krodhavarjitaṃ—(Ch. IV, sec. V, 23-26).

Brāhmaṇas are to be preferred, in the absence of sufficiently qualified *Brāhmaṇas* qualified *Kṣatriyas* and *Vaiśyas* should be appointed (Ch. IV, sec. V, 27-28). (iv) But in no case can a dispute be settled unless the adjudicators sit in a properly constituted court, which again can never be constituted of a single person (not even the king). The king (or his councillor or judge) must sit with his co-adjudicators (*sasabhyah*). (v) The trial and the pronouncement of judgment are to be public or *sabhāsthitah*[4] (see also Ch. IV, sec. V, 107-114; 328-331), because secret trials may result in partiality the causes of which are passion, cupidity, fear, malice and secret information.[4] (vi) Exemplary punishment is recommended for judges whose decisions are vitiated by fear, greed or passions (Ch. IV, sec. V, 179-181).

The Śukraian courts (*Sabhā*) are, however, not merely to administer laws according to their letters but should administer justice taking into consideration the spirit of the laws and circumstances of particular cases. Śukra, as a realist, is never tired of reminding us that the conception of justice is a social and therefore a relative one, that is, it varies according to time, place and circumstances (Ch. V, 70-72 ; 133-134). Hence, though the court is described as the place " where the study of the social, economic and political interests of man takes place according to the dictates of the *Dharmaśāstras* or laws " (Ch. IV, sec. V, 83-84), local customs and traditions cannot be ignored by a judge, not even by the king (Ch. IV, sec. V, 89-91) otherwise the people get agitated (Ch. IV, sec. V, 92-93).[5] Instances of customs—such as, marrying the maternal uncle's daughter by the *Brāhmaṇas* in the South, beef-eating by the artisans of the middle country or *madhyadeśa*, drinking (wine) by the women of the North, marrying the brother's widow in the *Khaśa* country (Ch. IV, sec. V, 94-99)—are cited to show how customs have put a seal of sanction upon practices in particular localities which run contrary to the practices of the Indo-Aryan community in general and which in spite of such deviations, however, are to be respected. Long-standing customs are not to be condemned.[6]

4. *Naikah paśyechcha kāryāṇi vādinośśṛṇuyādvachaḥ*
Rahasi cha nṛpaḥ prājñassabhyāśchaiva kadāchana
Pakṣapātādhiropasya kāraṇāni cha pancha vai
Rāgalobhabhayadveṣā vādinoścha rahaśśrutih—(Ch. IV, sec. V, 12-15).
Yuktipratyakṣānumānopamānairlokaśāstrataḥ
Bahusanmatasamsiddhān viniśchitya sabhāsthitaḥ
Sasabhyaḥ prāḍvivākastu nṛpaṃ saṃbodhayet sadā—(Ch. II, 197-199).

Though for unavoidable reasons the Śukraian institutions and functionaries like ,, *sabhā*" and " *niyogi* " have been mentioned in translation by their modern equivalents, it is not suggested that they had attained the status and efficiency of their modern counterparts, *viz.* the modern court and the modern lawyer.

5. *Deśajātikulānāṃ cha ye dharmāḥ prāk pravartitāh*
Tathaiva te pālanīyāh prajā prakṣubhyate-'nyathā—(Ch. IV, sec. V, 92-93).

6. *Yeṣāṃ paraṃparāprāptāḥ pūrvajairapyanuṣthitāḥ*
Ta eva tairna duṣyeyurvāchārānnetarasya tu—(Ch. IV, sec. V, 100-101).

We have noted Śukra's insistence on cases being tried in a properly constituted court. It is however, difficult to make out what exactly the constitution of the court according to Śukra should be, nor does he maintain a clear distinction of jurisdiction between civil and criminal courts. His king and/or his judicial officers seemed to have competence to decide all cases (civil or criminal) but the Śukraian King's Bench (whether presided over by the king or his chief justice) with its jurisdiction over both civil and criminal matters was not a court of first instance (i.e. of original jurisdiction) in all cases not only in the " out-stations " and villages but not even in the capital, where the king usually resided. Self-adjudication or trial by peers seemed to have been the more favoured method of assessing punishments or settling disputes, for, according to Śukra, " foresters are to be tried with the help of foresters, merchants by merchants, soldiers by soldiers and in the villages by the neighbours.[7] Lines 59 to 62 (Ch. IV, sec. V) indicate that disputes had first to be tried in the three grades of courts of self-adjudication, in the order, family (or *kula*), corporation (or *śreṇi*) and community (or *gaṇa*) and when these (people's) courts failed to give satisfactory remedy the interference was to be sought of the courts of King Bench in the order, councillors' court, councillors' court presided over by the chief justice (*prāḍvivāk* or *adhyakṣa*) and courts presided over by the king.[8] In those courts which we have designated King's Bench (i.e. in which the king with his councillors or the councillors themselves tried cases) there seemed to have existed a difference of competence (between the king and his councillors) in the award of punishment, because the councillors, it is stated, could give only *dhigdaṇḍa* and *vāgdaṇḍa* (i.e. moral disapprobation and oral chastisement) but fines and corporeal punishments could be inflicted only by the king.[9]

Though the jurisdiction of courts is not strictly separated (in the *Nītisāra*) between civil and criminal matters, there seems to be a suggestion in favour of a separation of jurisdiction of the courts of common law (*Smṛti*) from those of positive law (*Nyāya*), because the king is required to sit at different times for trying cases involving these two systems of law (i.e. *Smṛti* in the morning and *Nyāya* at noon).[10]

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7. *Āraṇyāstu svakaih kuryussārthikāssārthikaissaha*
Sainikāssainikaireva grāme-pyubhayavāsibhih—(Ch. IV, sec. V, 44-45).

Note.—Even thieves and ascetics are to settle their disputes according to the usage of their guilds (Ch. IV, sec. V, 35-36).

8. *Vichārya śreṇibhih kāryaṃ kulairyanna vichāritaṃ*
Gaṇaischa śreṇyavijñātaṃ gaṇājñataṃ niyuktakaiḥ
Kulādibhyo-'dhikāssabhyāstebhyo-'dhyakṣo-'dhikah kṛtah.
Sarveṣāmadhiko rājā dharmādharmaniyojakaḥ—(Ch. IV, sec. V, 59-62).

9. *Dhigdaṇḍastvatha vāgdaṇḍassabhyāyattau tu tāvubhau*
Arthadaṇḍavadhāvuktau rājāyattāvubhāvapi—(Ch. IV, sec. V, 547-548).

10. *Nyāyān paśyettu madhyāhne pūrvāhne smṛtidarśanaṃ*—(Ch. IV, sec. V, 106).

Ordinarily the king and his councillors (*sabhyas*) are not to take cognizance of offences or disputes unless they are brought before the court, but the king's courts could however, take direct cognizance (without any complaint from any party) of cases of misdemeanour or offences against the king's person (*chhalas*), felony or offences against the community (*aparādhas*) and offences against the State (*nṛpajñeyas* or *rajajñeyas*).[11] Fifty varieties of *chhalas* (Ch. IV, sec. V, 140-160), ten of *aparādhas* (Ch. IV, sec. V, 161-164) and twenty-two of *nṛpajñeyas* (Ch. IV, 165-171) are mentioned in the text. May we not in these lines read an indication of differenciating public offences (crimes) from other offences ?

It may be noted *en passant* that the Śukraian court was quite sensitive about its own dignity and the *Nītisāra* provides that complainants who are " insolent, vehement in speech, vain or rough " or those who " sit on the seat of the judges or are boastful " should be punished.[12] Probably these offences were the Śukraian equivalents of the modern offences coming under the category of contempt of court.

The Śukraian trial begins with the entry in court of the plaintiff (*arthi*) who should " bend low and submit his petition by folding his hands in submission ". The king (and his councillors) in turn however, should first console and appease him and then commence the trial (Ch. IV, sec. V, 112-114). After the submission of the plaint or *āvedana* which should be intelligible (Ch. IV, sec. V, 175) the plaintiff should be interrogated by the councillors. The plaintiff who after mentioning his case gives it up or contradicts himself is to be punished.[13] In criminal cases (which are more elaborately described in the text) the plaint or the complaint is called the *pūrvapakṣa*. If a *prima facie* case is made on the basis of the *pūrvapakṣa* against the accused, the complainant could (on the strength of a royal order to that effect) detain the accused until he is summoned for trial in the court.[14] These detentions (*āsedhas*) or limitations on movements can be of four kinds, i.e. with regard to certain places (*sthānāsedha*), time (*kālāsedha*), foreign countries (*pravāsāsedha*) and activities (*karmāsedha*) (Ch. IV, sec. V, 189-190). A person who is served with such an order of detention is called *āsiddha* or " bound down " and he must not trans-

11. *Chhalāni chāparādhāṅścha padāni nṛpateslathā*
Svayametāni gṛhṇīyānnṛpastvāvedakairvinā—(Ch. IV, sec. V, 133-134).

12. *Uddhataḥ krūravāgveṣo garvitaśchaṇḍa eva hi*
Sahāsanaśchātimānī vādī daṇḍamavāpnuyāt—(Ch. IV, sec. V, 172-173)

13. *Śrāvayitva tu yatkāryaṃ tyajedanyadvadedasau*
Anyapakṣāśrayādvādī hīno daṇḍyaścha sa smṛtaḥ—(Ch. IV, sec. V, 271-272).

14. *Vide*, Ch. IV, sec. V, 184-189.

The right of a private person to detain another is to be noted, though this was permitted only on obtaining a royal order (*rājājñā*).

gress the prohibitions, but such persons should not be harshly treated nor debarred from answering calls of nature.[15]

People against whom complaints have been lodged are required to attend courts when summoned by king's warrants or officers (Ch. IV, sec. V, 195-196) but a large number of persons—such as the sick, the old, the drunk, the stupid, the minor, young maids, high class ladies, persons about to be married, artisans at their work, agriculturists in harvest seasons—are neither to be bound down (as defendants) nor to be summoned as witnesses (Ch. IV, sec. V, 199-209). Such persons and those who do not know the legal procedure are (it seems) to be represented by lawyers (*niyogis*), who for the particular cases for which they are engaged are to be treated as agents or proxies of their principals (Ch. IV, sec. V, 222-223). The fee of the lawyer is to be 1/16th, 1/20th, 1/40th, 1/80th or 1/160th of the interest involved (i.e. value defended or fine realised) in the inverse proportion of such values or fines (Ch. IV, sec. V, 224-226) and a lawyer who charges fees otherwise (i.e. in excess of the rates prescribed above) is to be punished by the king.[16] The appointment of lawyers in particular cases is left to the parties concerned and is no business of the king (Ch. IV, sec. V, 230).

The right to be represented by lawyers or proxies is however, not to be acceded in cases of murder, theft, adultery, taking forbidden food, abduction, harshness (*pāruṣye*), forgery, sedition and robbery and in all these cases (notwithstanding the provisions of lines 199-209) the defendants (*pratyarthis*) must appear and answer charges personally.[17] The king is required to take suitable security (*pratibhū*) to ensure regular appearance (of parties) in court.[18]

A law-suit (*sādhya*), according to Śukra, may be divided into four parts or stages, *viz.* (*a*) the *pūrvapakṣa* (the plaintiff's statement), the *uttara* (the defendant's reply), (*c*) the *kriyā* (or the action of the two parties in conducting a case) and *nirṇaya* (or decision).[19] After the plaint has been settled according to the standards of acceptability of such documents, the defendant's version is to be taken down and this should be done in the presence of the plaintiff so that the whole case may be covered, point by point (Ch. IV, sec. V, 277-279). The defendant's reply can be of four categories, i.e., either (i) admission or

15. *Yastvindriyanirodhena vyāhārochchhāsanādibhih*
Āsedhayadanāsedhaissa daṇḍyo na tvatikramī—(Ch. IV, sec. V, 191-192)

16. *Anyathā bhṛtigṛhṇantaṃ daṇḍayechcha niyoginaṃ*—(Ch. IV, sec. V, 229).

17. *Manuṣyamāraṇe steye paradārābhimarśane*
Abhakṣyabhakṣaṇe chaiva kanyāharaṇadūṣaṇe
Pāruṣye kūṭakaraṇe nṛpadrohe cha sāhase
Pratinidhirna dātavyah kartā tu vivadet svayaṃ—(Ch. IV, sec. V, 238-241).

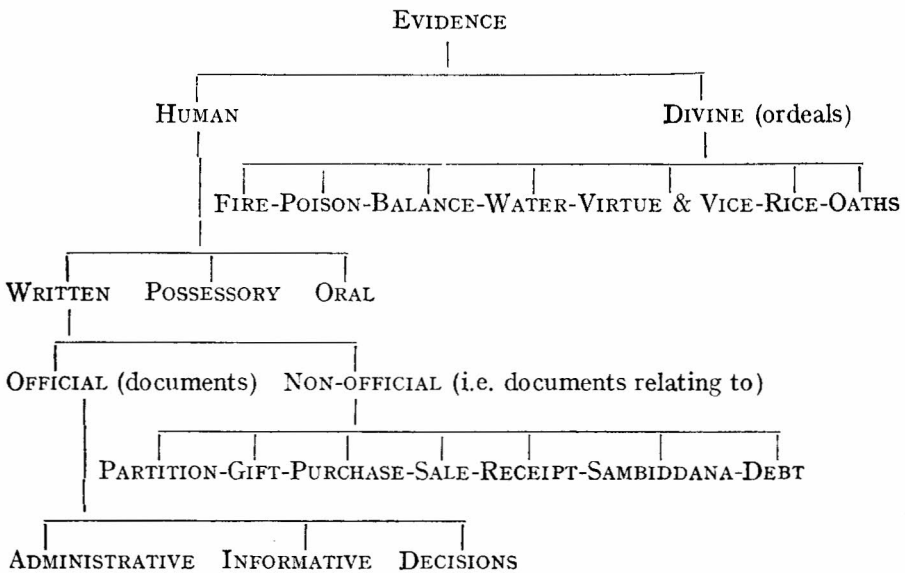
Note.—That practically for all major criminal offences appearance of the accused in court was demanded, so that representation by proxy was really limited to civil suits.

18. *Vide*, Ch. IV, sec. V, 244-245.

19. *Pūrvapakṣassmṛtaḥ pādo dvitīyaśchottarātmakaḥ*
Kriyāpādastṛtīyastu chaturtho nirṇayābhidhah—(Ch. IV, sec. V, 305-306)

(ii) denial or (iii) admission with justification or (iv) *res judicata* (*pūrvanyāyavidhi* or *praṅgnyāya*). In the last mentioned case the defendant maintains that the identical issues had been adjudicated upon previously by a competent court and that he (the defendant) had defeated the plaintiff. *Res judicata* may be proved in three ways : by the production of the former judgment, the evidence of officers and judges connected with the former suit and the evidence of other witnesses.[20] After the assessors (or councillors) have determined the party on which the burden of proof lies, that party should proceed to prove the points at issue with all the evidence (*sādhanas*) at his command (Ch. IV, sec. V, 313-317).

According to their descriptions given in the text, evidences may be classified somewhat in the following manner[21] :—



20. *Asminnarthe mamānena vādaḥ pūrvamabhūt tadā*
Jito-yamiti chedbrūyāt prāṅgnyāyassa udāhṛtaḥ
Jayapatreṇa sabhyairvā sākṣibhirbhāvayāmyahaṃ
Mayā jitaḥ pūrvamiti prāṅgnyāyastrividhassmṛtaḥ—(Ch. IV, sec. V, 297-300)

21. *Vide*, Ch. IV, sec. V, 321-322 ; 340-345 ; 470-473.

In connection with the possessory documents, it is interesting to note that the doctrine of " barred by limitation " was already known in Śukra's time. According to the *Nītisāra* adverse possession continuously for sixty years gives title to the possessor ; but mortgage, boundary land, minor's property, government property, sealed property of minor slaves and the property of a learned *śrotriya* can never be destroyed by any period of adverse possession—(Ch. IV, sec. V, 443-446).

Not any document, however, is valid (or admissible in evidence). To be a valid instrument a document must contain the following particulars :— time, year, month, *tithi* (day of the moon), period of the day, province, district, place, caste, size, age, the objects, the evidences, the goods, the number, one's own name, and the king's name, residence, names of the other party, names of ancestors, grief or injuries sustained, the collector or giver, and signs of mercy, etc. (Ch. IV, sec. V, 352-357).

The king should take the evidence in a case without delay and record them in the presence of both the parties, otherwise it may lead to miscarriage of justice.[22] He is also required to decide cases after taking into consideration all kinds of evidence, i.e. written as well as oral. (Ch. IV, sec. V, 420-421).

As to oral evidence, only the testimony of reliable persons is good evidence. A person who has seen or heard facts in the presence of the plaintiff and the defendant may be a witness or *sākṣī* (according to Śukra) provided his statements are uniform (i.e. consistent), he is intelligent, of sharp memory, virtuous and reliable (Ch. IV, sec. V, 366-371). Generally, householders (i.e. those with family responsibilities), wisemen, those who are young and those who are not dependants should be witnesses.[23] But children, women (except in cases in which women are involved), forgers, enemies, relatives, servants, those with whom one has monetary transactions or with whom one has matrimonial or educational relations are not to be witnesses (Ch. IV, sec. V, 377-381). This exemption seems to have been conceded in, what we should call, civil suits, because in cases of violence, theft, felony, assault and kidnapping witnesses are not to be discriminated,[24] i.e. irrespective of their status and condition they must appear in court. The witnesses should be interrogated in public (Ch. IV, sec. V, 413-414) after being well governed by oaths, the teachings of the *Purāṇas*, and being told about the great merits of a virtuous life and the great sin committed by taking recourse to falsehood (Ch. IV, sec. V, 398-400). Śukra however realises that it is not easy for a court to detect false evidence or perjury and the only way to extract correct evidence from the less virtuous section of the society is to frighten its members with divine punishment which awaits sinners hereafter (Ch. IV, sec. V, 409-414).

Recourse to the divine tests (or ordeals) is to be taken only when all human persuasions and human evidences have failed.[25] Seven such ordeals

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22. *Na kālaharaṇaṃ kāryaṃ rājā sādhanadarśane*
Mahān doṣo bhavet kālāddharmavyāpattilakṣaṇaḥ
Arthipratyarthipratyakṣaṃ sādhanāni pradarśayet
Apratyakṣaṃ tayornaiva gṛhṇīyāt sādhanaṃ nṛpaḥ—(Ch. IV, sec. V, 328-331).
This is another example of Śukraian effort for impartial administration of justice.

23. *Gṛhiṇo naparādhīnāssūrayaśchāpravāsinaḥ*
Yuvānassākṣiṇaḥ kāryāsstriyasstrīṣu cha kīrtitāḥ—(Ch. IV, sec. V, 373-374).

24. *Vide* Ch. IV, sec. V, 375-376.

25. *Daivaṃ ghatādi tadbhavyaṃ bhutālābhānniyojayet*—(Ch. IV, sec. V, 323).

are mentioned in the text (as would be seen from the chart above). Of these, fire, poison and oaths do not require any explanation. As to the balance ordeal, probably the accused was weighed in the two scales of the balance twice and if there was any discrepancy in the two measurements he was pronounced guilty. As to water ordeal, it seems, the accused was immersed in water for a fixed period and if he did not get suffocated he was declared innocent. The virtue and vice ordeal consisted in the accused being blindfolded and required to touch two images (placed before him) one representing virtue and the other vice. If he touched the former he was innocent, if the latter he was guilty. The rice ordeal consisted in chewing a large quantity (*one karṣa*) of raw rice. If the accused did this without palpitation of the heart or suffocation he was innocent, otherwise guilty.[26] (Ch. IV, sec. V, 470-486).

It is to be noted that all the ordeals (mentioned) could be utilised for the detection of the same crime (say theft) according to the degree of culpability involved in different cases. For instance recourse is to be taken to the fire, poison, balance, water, virtue and vice, rice ordeals or to oaths if the amount or value of things stolen was Rs. 1,000.00, 750.00, 666.00, 500.00, 250.00, 125.00 or 62.00 respectively.[27] Recourse must be taken to ordeals in cases of crimes (like adultery, incest, etc.) in which it is not possible to secure direct proofs (Ch. IV, sec. V, 500-501). Various other cases in which *divya sādhana* or ordeals may be utilised are mentioned in lines 502-514. (Ch. IV, sec. V).

The absurdity of forming judgments on the outcome of such ordeals is obvious. It is however, to be remembered that Śukra recommends these ordeals only in cases where due to obscurity of facts, nature of circumstances or obstinacy of parties it is not possible to get any proof relating to the issues involved (Ch. IV, sec. V, 525-528). It may also be noted that the fright that the prospect of going through such an ordeal arouses, might often succeed in overcoming the obstinacy of parties who are otherwise unwilling to divulge the truth. From this point of view these ordeals are to be treated as psychological weapons rather than divine evidences. In disputes of certain nature, such as those relating to immovable properties, unions and guilds, non-delivery of gifts, master and servant, rescission of sales or non-payment of price, (it seems) ordeals are never to be utilised, because it is stated that they must be proved by witnesses, documents and possession.[28]

The last stage of the law-suit consist in the pronouncement of the judgment and the grant of the letter of victory (or *jayapatra*). Decisions of courts of

26. These explanations are taken from the foot-note on page 204 of B. K. Sarkar's translation of *Śukranītisāra* (1914) which has been helpful to me in many respects.

27. *Vide* B. K. Sarkar's translation (1914), page 205 (foot-note).

28. *Sthāvareṣu vivādeṣu pūgaśreṇigaṇeṣu cha*
Dattādatteṣu bhṛtyānāṃ svāmināṃ nirṇaye sati
Vikrayādānasambandhe krītva dhanamanichchhati
Sākṣibhirlikhitenātha bhuktyā chaitān prasādhayet—(Ch. IV, sec. V, 517-520).

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law (*nirṇayas*) are to be based on the following: (*a*) proofs or *pramāṇas* (oral or written), (*b*) reasons or logic, (*c*) usages, (*d*) oaths, (*e*) special order of the king and (*f*) admission by the plaintiff. Persons not satisfied with a judgment or decision and objecting to it on the ground of being against *Dharma*, can have the case re-tried on depositing double the fine (*dviguṇam daṇḍam*). But a re-trial or an appeal may also be preferred for procedural mistakes (in the trial) committed by either the witnesses, or the officers or the king himself.[29]

It is to be noted that Śukra is no respecter of persons and he boldly prescribes that even judicial officers (councillors or the Chief Justice) should be fined (Rs. 1,000.00) by the king if they decide cases contrary to law.[30] It is, however, not stated as to what happens if the king (on appeal) decides a case contrary to law. Ultimately, the king's position in the State (and in the court), according to Śukra, is supreme, [even though he (Śukra) makes no secret of his disapprobation of arbitrary rule and arbitrary decisions]. Consistently with that view, it is not possible for him to prescribe any earthly punishment for the king. But wherever earthly resources fail Śukra is quite willing to take recourse to divine remedies and to threaten parties, which cannot be tackled with human persuasions and ingenuity (like a false witness or a king sitting as a judge), with divine punishment here and hereafter. Two other points are left untouched by Śukra, *viz.* (i) what happens in case of a conflict between the common law (*Smṛti*) and king's orders (*śāsanas*) and (ii) if court fees are to be charged.

It would not be perhaps out of place to point out here that the subject of *vyavahāra* engaged the attention of Indian writers from the earliest historical times. In the course of its development the conception of *vyavahāra* underwent several changes. Beginning with Āpastamba (600-300 B.C.) who used it to mean "transactions or dealings"[31] it has been used in the *Śukranītisāra* (400-100 B.C.), in the *Mahābhārata*, *Manusmṛti* (200 B.C.-100 A.D.) and the *Yājñavalkyasmṛti* (100-300 A.D.) to mean "law-suits" or "legal proceedings"[32] and in the hands of still later writers[33] like Jīmūtavāhana (1100-1150 A.D.) and Raghunandana (1520 A.D.) it came to mean "judicial procedure". It has however to be noted that though legal disputes and judicial

29. *Tīritaṃ chānuśiṣṭaṃ cha yo manyeta vidharmataḥ*
Dviguṇaṃ daṇḍamādhāya punastat kāryamuddharet
Sākṣisabhyāvasannānāṃ dūṣaṇe darśanaṃ punaḥ
Svacharyāvasitānāṃ cha proktaḥ paunarbhavo vidiḥ—(Ch. IV, sec. V, 549-552).

30. *Amātyaḥ prāṅgvivāko vā ye kuryuḥ kāryamanyathā*
Tatsarvaṃ nṛpatiḥ kuryāt tān sahasraṃ tu daṇḍayet—(Ch. IV, sec. V, 553-554).

31. *Vide* Āpastamba's *Dharmasūtra*—II, 7.16.17; I, 6.20. 11 and I, 6.20.16.

32. *Vide Śukranītisāra*—IV, V, Lines 7-11 and Line 309; *Śāntiparva*, 69. 28; *Manusmṛti*—VIII, 1; and *Yājñavalkyasmṛti*—II, 1.

33. *Vide* Jīmūtavāhana's *Vyavahāramātṛkā* and Raghunandana's *Vyavahāratattva*.

procedure have to be treated as two different things they are nevertheless inextricably connected matters and therefore discourses on *vyavahāra* included discussions (however meagre) on both the subjects and constitute quite a bulky literature of the Hindus on, what in modern phraseology would be called, administration of justice. The scope of the present article is, however, strictly confined to such discussions on the subject as are to be found in one of the earlier works (*viz.* the *Śukranītisāra*) wherein the treatment is naturally incomplete and in some respects archaic.

Of one point Śukra's treatment is particularly inadequate, *viz.* the constitution of a proper court. So far as known to me he makes passing reference to this in two places: (i) In Chapter IV, Section V, lines 9-12, he says that the king should not try cases alone and that he should sit for such purposes in the company of the chief justice (*prādvivāk*), *Brāhmaṇas*, the priest (*purohita*) and the *amātya*, i.e. the officer in charge of land records. (ii) Again in lines 85-86 (of the same chapter and section) Śukra says that the king should enter the court modestly together with the Brāhmaṇas and the ministers (*mantribhih*) who know state-craft, with the object of investigating cases. It is regrettable that for "judge" as such there is no distinct designation. From the general tenor of Śukra's writings (specially Chapter II) one may be permitted to surmise, however, that probably some of the important officials[34] of the State were called upon by the king to sit as *sabhyas* or councillors (or puisne judges) with himself and/or his chief justice, the particular officials invited being decided by the nature and circumstances of particular cases. For instance, in a dispute relating to land the *amātya* and in a case involving a foreigner the *mantrī* would probably be invited to sit as a councillor. Probably this explains the reason for using different terms like *sabhya* and *mantrī* for the councillor or the judge.[35] Such officials probably constituted a sort of a panel of visiting councillors who acted more as assessors (than judges) in cases which required their special knowledge and in addition there was a permanent body of councillors or *sabhyas* (usually learned *Brāhmaṇas*) who along with the king and/or the chief justice (*prādvivāk*) constituted, so to say, the permanent bench. Such defects however are natural in a work of such antiquity and as such do not deprive it of its importance as one of the earliest documents devoted to the problems of social justice.

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34. The important officials, likely to have been called upon to act as councillors were the priest (*purodhā*), the viceroy (*pratinidhi*), the chief-secretary (*pradhāna*), the war-secretary (*sachiva*), the foreign secretary (*mantrī*), the learned adviser (*paṇḍita*), the chief justice (*prādvivāk*), the land record and revenue officer (*amālya*), the finance minister (*sumantra*), and the ambassador (*dyūta*).

35. Usually the word *sabhya* has been used but in places (e.g. Ch. IV, sec. V, lines 86 and 109) the word *mantrī* has been used. Sometimes the *amātya* and the *purohita* are included in the list of councillors (see Ch. IV, Sec. V, line 10).