

The Uncodified Nature of Dharma and the Multiplicity of Smritis: Historical Challenges of Legal Uncertainty and Their Modern Implications

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Abstract: This paper examines the ancient Indian legal tradition of *Dharma* and the multiple *Smṛti* texts (Dharmaśāstras) in lieu of a single codified law. We show that *dharma* was a broad concept of right conduct and social duty rather than a modern secular “law,” encompassing moral, religious, and customary obligations[1][2]. Multiple *Smritis* (Manu, Yājñavalkya, Nārada, etc.) coexisted because ancient society was plural and lacked centralized legislation. As Viramitrodaya and later commentators note, each text largely codified the *ācāra* (accepted customs) of particular communities[3][4]. Conflicts among Dharmaśūtras were resolved through an authoritative hierarchy (Veda > Smṛti > ācāra), interpretative principles (treating conflicting rules as alternative options), and reliance on local usage[5][2]. Although Western scholars have often viewed this diversity as “uncertain” law[6], our analysis shows that in practice it was a coherent plural system: what was *dharma* for one person or community could legitimately differ from that of another[2][5]. We draw parallels with modern legal pluralism (e.g. personal laws, customary laws, and pluralistic jurisdictions) and argue that the Indian experience suggests caution in equating codification with certainty. Key lessons include recognizing the value of local norms and flexible interpretation, and viewing law as evolving from lived practice rather than solely state command. Our comparative analysis - drawing on legal positivism, natural law, and legal realism - reveals that ancient Indian jurists effectively managed plural sources of normativity, offering insights for contemporary systems grappling with diversity and codification.

Keywords: Dharma; Dharmaśāstra; Smṛti; Legal Pluralism; Ācāra (Customary Law); Ancient Indian Jurisprudence; Manusmṛti; Yājñavalkya Smṛti; Nārada Smṛti; Legal Uncertainty; Natural Law; Legal Positivism; Customary Law; Judicial Interpretation; Comparative Legal Systems; Personal Law; Normative Pluralism; Indigenous Legal Traditions; Codification vs Flexibility

Introduction

In classical India “**dharma**” was not simply a synonym for “law” in the modern, positivist sense. Rather, *dharma* denoted the whole fabric of religious, moral, and social duty that holds the cosmic and social order together[1][2]. The Sanskrit word itself is often translated as “law,” “duty,” or “right conduct”[1], but none fully capture its range: *dharma* encompassed personal obligations, caste duties, family roles, ritual norms, and even cosmic order (ṛta)[2][1]. The Dharmaśāstras or *Dharmaśūtras* (written between c. 600 BCE – 600 CE) are collections of *dharma* rules, but they read more like encyclopedic manuals of ethics and

custom than fixed legal codes[1][7]. As one scholar observes, these texts do quote the Vedas as the “root of dharma,” yet the Vedas themselves contain “no positive precept which could be used directly as a rule of conduct”[8]. In short, dharma functioned as sacred duty or moral order rather than enforceable state law.

Against this background, it is often assumed that the multiplicity of *Smritis* (Manu, Yājñavalkya, Nārada, Viṣṇu, Parāśara, etc.) created **legal uncertainty**: How could judges know which rule applied when texts disagreed? This paper critically examines that assumption. We show that multiple Śāstras coexisted because ancient Indian jurisprudence was deliberately pluralistic: local custom (*ācāra*) was authoritative, and *Smritis* primarily codified diverse practices[3][9]. Mechanisms of conflict resolution—hierarchies of authority, flexible interpretation, and a focus on custom—mitigated confusion[5][2]. Rather than “uncertainty,” we find a coherent plural legal order that treated different norms as valid alternatives, reflecting the sociocultural diversity of India. Finally, we draw parallels to modern legal pluralism (e.g. religious personal laws, indigenous customs in national law) and suggest that the ancient experience offers cautionary lessons: codification is not the sole path to certainty, and multiple sources of law can be systematically managed.

This analysis draws on comparative jurisprudence (positivism vs. natural law vs. realism) and primary texts (e.g. Manu-smṛti, Yājñavalkya, Nārada) as well as leading scholarship (Derrett, Kane, Lingat, Olivelle, Rocher, et al.) to address the key questions above. We proceed as follows: Section I defines *dharma* and compares it to modern law. Section II surveys why numerous *Smritis* emerged. Section III explores textual principles for resolving conflicts. Section IV reassesses the notion of “legal uncertainty.” Section V compares with modern plural legal systems. Section VI derives implications for today’s legal systems.

I. Conceptual Foundations of Dharma

In ancient India **dharma** was a multifaceted concept—ranging from cosmic order (*ṛta*) to personal duty (*svadharma*) to religious law. Translators equate *dharma* with terms like “law,” “duty,” “right conduct,” or “sacred obligation,” recognizing that the Dharmaśāstra corpus covers what we might call both *legal* and *social* norms[1]. As Blackburn notes, these texts instruct on daily and life-cycle rituals, caste duties, dispute procedures, and penances for violating dharma[1]. In other words, *dharma* prescribes **how a person ought to live**, encompassing ethics, rituals, and communal rules – only some of which resemble law.

A crucial difference from modern law is that dharma was understood as *inherent* or *eternal* (*sanātana*) truth derived ultimately from divine revelation (Śruti) and custom, rather than a human legislature’s enactment[8][10]. The Vedas were regarded as the “root of dharma,” yet as Davis explains, the Vedic texts themselves offer no direct positive commands to cite as law[8]. Instead, Dharmaśāstras (the Smṛti corpus) supposedly “remembered” and compiled rules consistent with Vedic spirit[8][11]. In this view, Dharma can be seen as akin to a **natural law**: a cosmic-moral order that ideally governs human action, beyond what any king could fully codify.

Nevertheless, the *Dharmaśāstras* do present detailed prescriptions on marriage, inheritance, caste duties, and criminal offenses—fields now called family, property, and criminal law. For example, Manu’s Code begins: “I will now propound the eternal law of dharma...” and then systematically treats crimes, punishments, civil procedure, and duties[12]. Yet even here, Manu admonishes rulers to base judgments not only on text but also on “provincial laws of each caste, the laws of guilds, and the laws of families”[13]. This verse (Manu 8.41) instructs the king to “determine the law for each man, after having duly examined the caste-dharma

and family-dharma”[13]. The implication is that **personal and local norms (svadharma)** guide legal decision-making. Thus, dharma includes a strong contextual component: what is “right” can differ by class, profession, or locale[2][13].

In sum, while the Dharmaśāstras are often called Hindu legal texts, their conception of law is *not* identical to modern positivist law. Modern law is typically secular, codified, and state-enforced; dharma was sacred, multifarious, and enforced by community and conscience as much as by king. As one survey puts it, “*Dharma is a difficult term to translate... it covers both social and legal matters*”[1]. We will see that this divergence in concept (cosmic duty vs secular law) underlies why the absence of a single code in ancient India caused less disquiet than a positivist might expect.

II. Multiplicity of Smritis

With the conceptual background above, we turn to the **multiplicity of Smritis** – why so many Dharma treatises were composed instead of one “Hindu code.” By the early centuries CE, dozens of Dharmasūtras and Dharmashastras circulated, but only a handful (Manu, Yājñavalkya, Nārada, Viṣṇu, Parāśara) remain fully extant or influential. Each claims to convey the eternal dharma, yet they vary markedly in content and emphasis.

Scholars agree that there was *no singular legislature* in ancient India that produced an exclusive legal code. Rather, jurists (brāhmaṇa scholars) composed treatises reflecting their own communities’ norms and the prevailing ideas of their time. For example, Manu’s Code (roughly 2nd–3rd c. CE) became famous in northern India, while Yājñavalkya’s (4th–5th c.) was revered for its orderly style. Nārada’s work (5th–6th c.) focused on purely legal matters and was authoritative in parts of South India. Each Dharmaśāstra often identifies different authors for the four Vedas or Manvantaras, suggesting that the tradition allowed multiple origins of dharma[7][14]. Pandit Kane’s magisterial History of Dharmasastra catalogs scores of named Smritis, indicating the literary richness of the tradition.

A key reason for plurality was **regional and community diversity**. As Viramitrodaya observed, different Smṛtis arose partly because local communities had different customs[3]. Commentators like Medhātithi explicitly describe the Smritis as codifications of existing *ācāra*[3]. In other words, each text crystallized the prevailing norms of a region, caste, or professional group. For instance, one Dharmasūtra might allow a widower to remarry under certain local customs, while another proscribed it; both statements were “dharmic” in their respective communities. This localism was systematic: the Smritis often preface rules with conditions like “in towns of the good” (pāṭhya) versus “in bad towns” (apāṭhya), or “for learned brahmanas” versus others[15].

Moreover, there was no authoritative canon that “survived” in totality. The *Smṛti* tradition itself is flexible: new texts could be composed, and older ones interpolated. Shiva and Sūta traditions even held that Manu or another originator of law drew on compilations of brahmin teachers. Over time, schools wrote *nibandhas* (digests/commentaries) to reconcile differences (e.g. Jimutavahana’s *Dayabhaga* systematized inheritance law in Bengal). The result was that *Manu*, *Yājñavalkya*, *Nārada*, and others were read in parallel, not linearly as legislation, but as authoritative guides to diverse practices[14][3].

Thus, multiple Smṛtis coexisted because ancient Indian law was inherently **plural**. There was no assumption that one treatise would be complete or final. Indeed, one medieval jurist quipped that if diversity seemed odd, “every village will have a different law”[2]. The Viramitrodaya summarizes the attitude: Smritis codified customs, yet *smṛtikāras* (drafters)

also exercised judgment in “making law just and rational”[3]. In short, plurality was a feature: a system based on layered authorities and living custom, rather than one abstract code.

III. Conflict Resolution Mechanisms

If many Dharma texts existed, how were disputes between them resolved? Ancient Indian jurists developed several mechanisms, embedded in the tradition, to handle conflicts. We highlight four key principles:

- **Hierarchy of Authorities:** The Śāstras themselves set up an order: **Veda (Śruti) > Smṛti > Ācāra (custom)**[5]. Manu-smṛti 2.6 (as elaborated by commentators) states that when a conflict arises between Śruti and Smṛti, the Smṛti is to be rejected[5]. Likewise, if a custom conflicts with a Smṛti injunction, the Smṛti typically prevails, except when a custom is established by wise elders (viśiṣṭācāra)[5]. Within Smṛtis, Manu’s own text held special weight: if Manu contradicted another Smṛti, Manu’s rule was to be accepted[5]. Thus, judges had a clear pecking order of norms. (In practice, however, pure Śruti-based disputes seldom arose, since most legal rules are *Smṛti* in character.)
- **Local Custom (Ācāra):** Ironically, while custom is formally lower than Smṛti, in practice ācāra was often decisive. Many Sanskrit texts and commentaries state that a well-established custom binds the community even against written precepts[9][2]. Manu 8.41 enjoins the king to “determine each man’s law [svadharma] by surveying caste-laws, guild-laws, and family-laws”[13]. Katju cites jurists noting that “*custom no doubt prevailed over these written texts*”[16] (though a plaintiff needed proof of custom). In fact, Rocher emphasizes that dharma itself is essentially “accepted custom (ācāra),” which varies by region, caste, or profession[2]. A celebrated aphorism attributed to Vasiṣṭha captures this: *śruti-smṛti-vihito dharmah tad abhāve śiṣṭācāraḥ pramāṇam* – when the Veda and Smṛti are silent, *acāra* is the authority[5]. In routine dispute resolution, local usage often filled in gaps left by the texts.
- **Analogy and Interpretative Strategies:** When Smṛti rules appeared contradictory or incomplete, commentators devised interpretative solutions. One method was to treat conflicting injunctions as **alternate options** rather than mutually exclusive laws. For example, the Dharmasūtras often present multiple forms of marriage or inheritance as viable choices. Ludo Rocher notes that scholars like Buhler explicitly marked the ambiguous term “[or]” in the Laws of Manu 9.105 to allow multiple inheritance rules[17]. Lingat observed that “contradictory rules in the dharmasāstras... must be interpreted as options”[12]. Another strategy was chronological priority: a rule from an older (or more authoritative) source could override a later anomaly. The Dharmasutras also distinguished “orthodox” versus “heterodox” texts: e.g., Viramitrodaya rules that when an orthodox Smṛti permits an act but a heterodox one forbids it, the prohibition prevails[5]. Ultimately, the aim was to minimize outright conflict by either legal subordination (one rule nullifying another) or allowing choiceness where possible.
- **Judicial Process and Councils:** Formal dispute settlement relied on *vyavahāra* (procedure) rules. The Dharmasāstras prescribe that a king’s court include learned Brahmins and elders when judging cases[13]. They advise the king to **enquire about local usages** before deciding[13]. In ambiguous cases, judges could refer disputes to a

sabha (assembly) of elders or to expert commentators. Medieval courts developed case-law based on *nibandha* digests (e.g. *Mitākṣarā* by Vijñāneśvara, *Dayabhāga* by Jimutavāhana) which interpreted and reconciled the classical texts. In effect, ancient Indian judges used a mix of legal reason (*upamāna*, analogy), textual precedent (commentarial views), and on-the-spot local knowledge to reach verdicts.

In summary, the Dharmasūtra tradition itself provided for resolving discrepancies: textual hierarchies ensured a nominal priority, but local custom and jurisprudential judgment played the decisive role. One can list key rules as: **Śruti over Smṛti, Smṛti over custom, Manu over other Smṛtis**[5]; treat each conflicting *dharma* as an alternate; always seek the applicable tradition of the claimant's community. These mechanisms prevented doctrinal confusion from paralyzing justice.

IV. Legal Uncertainty – Analysis

Was the ancient system truly “uncertain law,” or is that a projection of modern expectations? The answer is that **ancient Indian jurisprudence operated on different premises**. Western scholars like Lingat have lamented the apparent contradictions in the Śāstras: for example, he notes that the Laws of Manu prescribe *multiple incompatible rules* for paternal inheritance and levirate marriage, making the text “hardly usable in legal practice”[6]. Indeed, even Buhler (Manu's translator) glossed “or” into a verse to reconcile Manusmṛti's three inheritance schemes[12]. On a strict positivist view (one set law per matter), such indeterminacy seems troubling.

Yet Rocher argues that this perspective misses the point. In traditional Hindu thought, “*what is dharma for one is different from what is dharma for another*”[2]. The system **embraced pluralism**: different castes, cities, and even families could follow different norms, and all were considered dharmic if they were long-practiced. Thus, contradictions in the texts were not necessarily bugs but reflections of diversity. Rocher concludes that the Śāstras “unanimously accept the validity of practices recognized within a region, a caste, or a family,” with only the vague proviso that they not “be contrary to the Veda”[2]. In inheritance cases, the Arthashastra explicitly directs judges to enforce *exactly* “the customary law (dharma) of a region, caste, or corporation”[18]. In practice each locale indeed followed its own consistent rules (Rocher recounts one area always did equal partition, another primogeniture)[18].

Put another way, **predictability came from familiarity with local norms**. A person in one village knew the inheritance custom for that village; a king's court would ask witnesses about the usage if needed[13][18]. There was no expectation of a single rulebook for the whole land. The “uncertainty” arises only if one assumes a modern idea of uniform statute. Rocher summarizes: the Dharmasūtras teach that *accepted custom* (*ācāra*) of each group is itself a valid dharma[2]. Conflicting verses in the books often signal that *both* courses (say, two marriage forms) were tolerated. Thus, ancient jurists and later commentators frequently treat contradictions as alternative ways (*vikalpa*)[17][5].

This plural approach contrasts starkly with modern codified systems. As Marc Galanter noted, modern law prides itself on *general rules applicable to the whole society*[19], whereas traditional dharma accepts multiple overlapping systems. Legal uncertainty in the contemporary sense was not the governing ideal. Indeed, one scholar wryly asked whether “Hindu Law” had ever truly existed, or was a “mere phantom” concocted by colonial jurists[20]. The British realized this when they tried to administer Hindu law: Warren Hastings' 1772 directive sought to use Hindu law books, but pandits disagreed on what the

law was. It took decades before British judges learned enough Sanskrit and local usage to render judgments (as Rocher recounts)[7].

In sum, it is **misleading to label the system “uncertain.”** Rather, it was *differentially certain*: within any community, the rules were clear; across communities, diversity was acknowledged. This is a modern misinterpretation born of expecting codification. As Savigny (cited by Katju) observed, such pre-modern systems evolved organically: “*law was found, not made*”, emerging from the *volksgeist* (people’s spirit)[21]. The Dharmasūtra tradition was precisely this: a reflection of lived customs and values. We should separate the **fact** of textual variability from the **interpretation** that it caused chaotic uncertainty. The speculated “phantom Hindu law” gave way to plural judicial practice: judges relied on *acāra* and prior decisions rather than expecting a single definitive manual.

V. Comparative Legal Analysis

The ancient Indian situation has clear parallels in modern legal pluralism. Legal pluralism today refers to the coexistence of multiple legal systems within one society—often seen as a challenge but also as a realistic acknowledgment of diversity[22]. In some countries, secular statutes operate alongside religious personal laws (e.g. Hindu, Islamic, Christian family laws in India, Nigeria, etc.), or customary law recognized by the state (e.g. indigenous land and family customs in South Africa and Latin America). These arrangements resemble the Hindu model: for example, India’s own constitution still allows different personal laws for Hindus, Muslims, etc., with the Dharmasāstras historically informing Hindu personal law[23].

In fact, British colonial policy deliberately imposed a form of pluralism. Anglo-Indian courts were instructed to apply Hindu or Muslim law “in suits regarding... religious usages or institutions”[7]. This meant giving effect to different legal traditions for different communities, not a single British code. Similar compromises exist today: civil law countries often carve out exceptions for customary law (e.g. in family or property matters) to maintain social harmony. Even in homogenous nations, regional or tribal customs sometimes have legal force (cf. Sharia councils in the UK, adat law in Indonesia, Native American law in the US and Canada).

From a theoretical standpoint, modern jurisprudence recognizes that *there is no one monolithic “law,”* a view anticipated by ancient practice. As one scholar notes, unlike modern “general rule” law (which Galanter calls a modern innovation), traditional Hindu law put forth different rules for different social segments[19]. The scholastic approach of the Dharmasūtras – quoting multiple authorities, deferring to custom, and using equitable reasoning – resembles contemporary notions of *legal realism* and *polycentric law*. For instance, Katedral systems of custom and state law exist side by side in many developing countries, and international law often defers to local tradition in the absence of treaty.

On the other hand, the Indian plural tradition also differs from modern pluralism in that ancient dharma was inherently normative (tied to sacred duty), whereas modern plural legal orders typically coerce compliance through the state. Yet the underlying principle – that different normative orders can coexist legitimately – is common. One can compare ancient Indian “varna-āśrama” custom-bound duty to modern function-based roles or multicultural accommodations. The idea that kings/judges must consider local custom is echoed in modern comparative law: e.g. the private international law doctrine “*lex loci*” applies local law in conflict cases.

Thus, the ancient Hindu model anticipated debates now common in multicultural societies: how to harmonize national uniformity with cultural autonomy. Like a modern federal system, ancient India accepted a hierarchy of norms but allowed strong regional variation. Legal scholars of pluralism (e.g. Tamanaha, Griffiths) would recognize the Dharmasūtra practice of *sabhā councils* (judicial assemblies) and *various āchāras* as examples of community legal autonomy. In sum, the parallels underline that what looks like uncertainty from one perspective can be legitimate legal pluralism from another. The British “one size fits all” approach actually disrupted a long-standing plural system, sometimes with friction.

VI. Modern Implications

What lessons might modern legal systems draw from this ancient experience? First, we **challenge the assumption that codification equals certainty**. Western legal thought often equates a single, written code with predictability. But the Indian case shows that even without a single code, societies can achieve coherent normativity through recognized plural sources. Indeed, strict codification can bring its own uncertainty: unanticipated facts may fall outside a code’s letter, requiring extensive interpretation or amendment. By contrast, a system that incorporates custom and discretionary judgment may resolve novel cases flexibly. (This tradeoff is debated in modern jurisprudence: some studies find that rigid codification can ironically increase uncertainty in practice, as judges must guess legislators’ intent).

Second, ancient India illustrates that **legal order may be more stable when it reflects social practice**. Savigny’s insight (echoed by Katju) that “law was found, not made”^[21] reminds us that imposing abstract rules alien to local norms risks non-compliance. For example, modern projects to impose uniform civil or criminal codes sometimes falter where they clash with community values. By comparison, the Dharmasāstric rule of deferring to *ācāra* allowed laws to evolve gradually with society. Contemporary legal reformers might similarly benefit from engaging customary institutions and local standards when designing new laws, especially in plural societies.

Third, the Indian example suggests **valuing moral and communal dimensions of law**. Modern secular legal systems often separate “law” from morality; ancient dharma saw them as entwined. While uncritical adoption of dharmic categories (e.g. caste duties) would be unacceptable today, the principle that law serves a moral and social order beyond mere deterrence is instructive. This is recognized in debates on legal positivism vs. natural law: dharma resembles a natural law ethic that might prompt modern jurists to consider justice and custom more explicitly.

Finally, the tension in ancient India between centralized codes and local customs has modern analogue in federalism and devolution. Just as ancient jurists insisted judges “inquire into local customs”^[13], modern courts sometimes apply regional law (as in federal contexts) or international human rights law might defer to local customs in adjudication (so long as fundamental rights are respected). The lesson is that **plural sources of law need not undermine rule of law** if properly organized: one can have overarching constitutional principles (akin to the Vedas as ultimate benchmark) while allowing sub-legal rules to vary.

In practical terms, modern systems might avoid rushing to a single uniform code in every domain. The Indian experience underscores the value of legal pluralism in areas like family law or land rights, where tradition governs personal matters. It also encourages humility about legal certainty: even heavily codified systems frequently rely on judges to interpret, creating de facto pluralism (common vs civil law differences). Thus, policymakers should

recognize that *formally* merging multiple legal traditions (e.g. a Uniform Civil Code) may not eliminate uncertainty if it ignores entrenched social norms.

In summary, the historical Dharmasūtra model teaches us that **law can be certain without being rigid**. The ancient Indian solution was to articulate general principles (e.g. “fairness requires special rules for each class”) and then defer details to community judgment. Modern legal theorists can learn from this by balancing universal standards with local flexibility. We must separate the fact that ancient India lacked a single code from the speculation that it was ungovernable. As Patrick Olivelle notes, the Dharmaśāstras themselves functioned as **normative commentaries** on community life, not disembodied statutes[1].

Conclusion

Ancient India’s legal tradition of dharma, embodied in many Śāstras and customs, was **uncodified but not chaotic**. *Dharma* was a holistic duty-based order, not a modern law code. The numerous Smṛtis reflect a pragmatic pluralism: they codified local norms and allowed variant rules by design[3][2]. Conflicts were managed through an internally consistent hierarchy (Veda, Smṛti, ācāra), interpretive options, and judicial discretion[5][2]. What critics label “legal uncertainty” may often be a misunderstanding: in context, the system was intelligible and functional.

Comparing to modern times, we see clear analogies to personal law pluralism and federalism. Modern legal systems can draw lessons about embracing diversity and grounding law in social reality, rather than assuming codification alone ensures predictability. At a deeper level, this history invites us to reevaluate positivist assumptions: law need not always be imposed from above; it can emerge from below in conversation with universal principles. The ancient dharmaśāstra model reminds us that legal certainty and justice can be achieved through multiple paths, not only through one uniform code.

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