

DHARMA SASTRAS (Hindu Law Books)

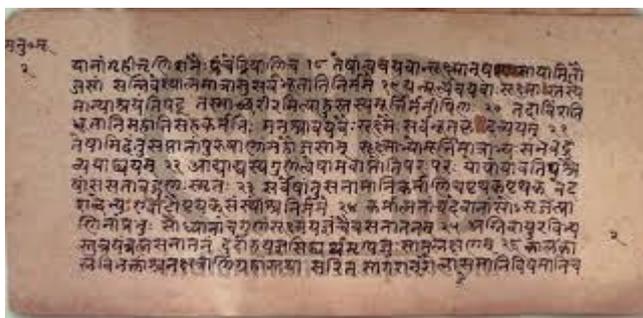
Overview Indian or, more accurately, Sanskrit literary tradition divides all literature into two overarching categories: *sruti* ('heard' or 'revealed') and *smṛiti* ('remembered'). Only the Vedas and *Upanishads* are *sruti* texts, while the much more capacious category of remembered texts include the myths (*puranas*), classical epics (*Ramayana* and *Mahabharata*) and law books. Among the many law books, the most influential are the *Dharma Sastras* ('Instructions on Dharma') composed in verse form. The content of the *Dharma Sastras* falls into three distinct groups: 1) rules about daily rituals, life-cycle rituals and duties of the four castes; 2) rules concerning the procedures for resolving disagreements over *dharma*; and 3) rules pertaining to expiations and penances for violating *dharma*. Beyond this, the texts also include lengthy sections devoted to the art of interpreting the Vedas.

Dharma is a difficult term to translate into English. Translators have used a number of near-equivalents, including 'law', 'duty', 'sacred duty', 'obligation,' 'proper action' and 'right conduct.' This essay will use 'right conduct' and 'law' since the texts cover what we would consider both social and legal matters.

The number of these legal texts is unknown (many cited texts have not survived), but many scholars place the total at about 5,000. Only four, however, have survived. The *Manu Smṛiti* (c. 2nd to 3rd c. CE) is the most studied and most often cited of the four, especially since the 18th century onward. It covers the full range of topics in the law books, and its explanations are less complex and more easily grasped than in other texts. The *Yajñavalkya Smṛiti* (c. 4th to 5th c. CE) is perhaps the second most important, valued in particular for its sophisticated language and metre. It is thought that in earlier times it was more important than the *Manu Smṛiti*. The *Narada Smṛiti* (5th to 6th c. C) is known as the most authoritative juridical text and is the only one that covers solely legal matters, ignoring religious and social issues. The *Viṣṇu Smṛiti* (7th c. CE) is also unique. As the last of the great law books, it has little to say about *dharma* itself and focuses instead on devotionalism, which was sweeping across India at the time of its composition.

It is important to emphasise that while these law books are not sacred, like the Vedas (which are the 'heard' or 'revealed' texts), they still derive their authority from those earlier texts. One way of putting it is that the law books use the Vedas as 'footnotes' to substantiate their legal arguments.

Although these law books are composed in a simple verse form, their content and intent are closer to those of the academic essay. The structure of the *Dharma Sastras* is that it first quotes from an old text, explicates it and then attempts to reconcile differing interpretations that have accrued over time. This approach means that the texts are veritable encyclopaedias of Hindu tradition, gathering verses, maxims, aphorisms and quotations from anywhere and everywhere. For example, one law book contains hundreds of verses found in the *Mahabharata* and probably culled from a common source.

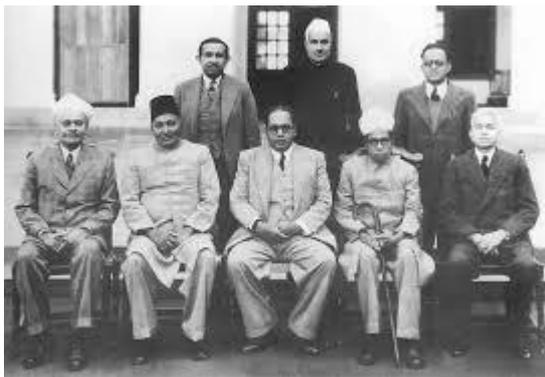


(page of a manuscript copy of the *Manu Smṛiti*, date unknown)

History The *Dharma Sastras* represent the continuation of a commentarial tradition that emerged in the later stages of Vedic literature. The *Brahmanas* (c. 900-600 BCE) are prose texts that explained and expanded upon the hymns of the *Rig Veda*. Later, in the early centuries of the Christian Era, the commentarial tradition was continued in a category of texts known as *sutras* (a succinct, aphoristic form of composition). These prose texts were then expanded, revised and collected in compilations known as the *Dharma Sutras*. And these texts, finally, were revised and updated in the *Dharma Sastras*, or Law Books, using a simple metrical form. Appearing roughly from 200-700 CE, the *Dharma Sastras* became the ultimate authority for textual and official discussions about the morality or immorality of any action or practice in Hindu society. Manuscripts with commentaries on different versions of the *Dharma Sastras* began to appear some time around 600-800 CE. Nearly fifty of these inconsistent manuscripts have survived, although one (used by Sir William Jones in 1794 for the first English translation) has dominated modern scholarship.

Little is known about the actual legal system in India before the coming of Islam, and scholars doubt whether anything like the modern, western notion of 'law' existed before about 1000 CE. Furthermore, it seems likely that the greater emphasis given to written legal procedures in the Delhi Sultanate (c. 1200-1500 CE) prompted a formalisation of Hindu law, too. A further codification and 'legalisation' of the *Dharma Sastras* was stimulated by the coming of colonial rule to the subcontinent. These 'law books' were among the first to be translated, printed and studied by European orientalists from the late 18th century onward, a tradition that continued among Indian scholars, who now looked at their ancient books in the light of modern notions of jurisprudence.

The British authorities in Bengal seized on these texts, which were commentaries on morality, and turned them into 'law books.' In 1772, Warren Hastings, Governor-General of Bengal, formally adopted the *Dharma Sastras* as the legal code for Hindus in parallel with the *Qur'an* as the code for Muslims. This process of the 'modernisation' of Hindu law entered another stage with the adoption of the Indian constitution in 1950, which stated that India was a secular country and imported wholesale colonial law into the 'new' legal code. The result is current confusion, based on a lack of consensus about religious law. Article 44 of the Constitution eliminated all religious-based law, while at the same time the Constitution differentiated between 1) 'Anglo-Hindu' law, which applied to Hindus, Jains, Sikhs and Buddhists; 2) Islamic law (*sharia*) for Muslims; and 3) Anglo-Christian law for Christians. In practice, Article 44 has been largely ignored by courts, and Muslims have been allowed to follow *sharia* whenever it conflicts with the secular legal code. The sharp division of Partition, when British India was split into (mainly) Hindu India and Muslim Pakistan remains. The irony is that the British Raj ensured that the ancient law books would continue to influence India well into the 21st century.

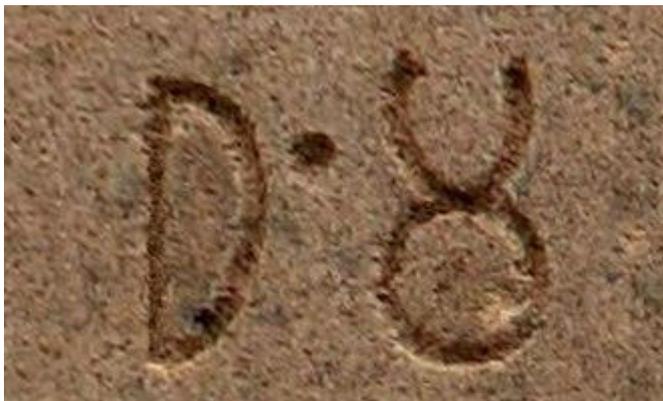


(committee members who wrote the Indian Constitution, photographed in 1947, with B R Ambedkar, in the centre)

Cultural significance As suggested by the historical information presented above, the cultural significance of the *Dharma Sastras* is both deep and enduring. These texts are the lynchpin between ancient India, represented by the Vedas, and modern India, represented by the Constitution of 1950. No one, except a scholarly elite, reads or is even concerned with the Vedas, but everyone, even a Prime Minister, needs some kind of guidance on how to live in the world. This is what the 'law books' provide for most Indians (Hindus, Sikhs, Jains, Buddhists and even some Christians). Not that the

texts offer specific solutions to specific real-life dilemmas—far from it—which is perhaps why the notion of *dharma* has retained its relevance. The texts do lay down some fairly exact punishments for particular offenses (see the translations below). But no one really reads the text, and *dharma* remains salient precisely because it is a generalised and adaptable moral concept, similar to the idea of ‘doing what is right.’ The same flexibility has allowed *dharma* to occupy a broad conceptual space within Indian culture and literature.

In texts, if not in practice, kings and gods, in particular, were expected to uphold *dharma*. In ancient and classical India, and especially in Buddhism, *dharma* was a synonym for ‘religion.’ The king was often called the ‘Dharma Chakravartin’ or ‘Turner of the Wheel of Dharma.’ After classical times, many Indian rulers called themselves ‘Dharma-rajā’, emphasising their role as protector of the weak and enemy of the unjust. Similarly, the god of the underworld, Yama, acquired the same name (Dharma Raja), as he was expected to punish the guilty and protect the innocent. However, it is arguably the Buddhist conception of *dharma* that is closest to something like ‘law’ in our modern usage.



(inscription from Asokan edict, c. 245 BCE, with *dhamma*, the Pali word for *dharma*)

In the complex cultural systems that developed in India, absorbing Greek, Central Asian, Persian, Turkic, Afghani and European people and values, the *Dharma Sastras* have been useful in articulating an outline for social interaction and governance. This is nowhere more obvious than in the British colonial authorities’ decision to rely on these texts for providing a legal and social code to guide their rule. In 1772, after the British took control of Bengal, which was the first step in establishing colonial rule, the Governor-General Warren Hastings issued this statement: ‘That in all suits regarding inheritance, marriage, caste and other religious usages or institutions, the law of the Koran with respect to Mahometans [Muslims], and those of the Shaster [*Dharma Sastras*] with respect to Gentoos [Hindus] shall be invariably be adhered to.’

In addition, the fact that the *Dharma Sastras* evolved over centuries, adding new material, like ‘a work in progress’, meant that it contained a little bit of everything, not all of it consistent. Similarly, there is no single canonical version of the texts. This lack of uniformity and coherence has also allowed the *Dharma Sastras* to function as all things to all people. The situation was summed up by Mahatma Gandhi, when he said, ‘I hold *Manusmriti* as part of Sastras. But that does not mean that I swear by every verse that is printed in the book described as *Manusmriti*. There are so many contradictions in the printed volume that, if you accept one part, you are bound to reject those parts that are wholly inconsistent with it. (...) Nobody is in possession of the original text.’ Other modern commentators have not been so kind, branding the *Dharma Sastras* as a ‘racist’ document that codifies the unjust treatment of women, low castes and tribal groups.



(inscription of an Ashokan edict, c. 258 BCE, Kandahar, modern-day Afghanistan. This is a bilingual inscription, in Sanskrit and Greek, in which the Sanskrit *dharma* is rendered as *eusebeia* in Greek. The Greek word means 'pious reverence' to the gods and 'right conduct' in social relationships)

Texts and translations

Manu Smriti Among the law books, the *Manu Smriti* stands out as the most prominent in the development of the Hindu tradition. Even today, it is cited and studied by the general public, by law-makers and by public officials, especially in village councils known as the *panchayat*. The *Manu Smriti* is primarily a discourse on the rights and obligations of individuals within society understood within a cosmological and teleological framework. This is evident from its four main divisions: 1) creation of the world; 2) source of *dharma*; 3) caste system; and 4) *karma*, rebirth and final liberation. The translations provided below cover a number of topics across these four divisions.

1. Creation of the world The *Manu Smriti* is so called because it is said to be the words of Manu, the first man. As is fitting for a text that sets out the rules that should govern the world, its first chapter tells us how that world came into being. The resulting creation myth told below represents an accumulation of various etiological stories already told in the Vedas and Upanishads. Here, then, at the beginning of the *Manu Smriti*, we have a clear illustration of its primary purpose: to make sense of the ancient texts and interpret them for a contemporary audience in, say, 400 CE. This extract comes from the translation by George Bühler in 1886.

1. The great sages approached Manu, who was seated with a collected mind, and, having duly worshipped him, spoke as follows:
2. 'Deign, divine one, to declare to us precisely and in due order the sacred laws of each of the (four chief) castes (*varna*) and of the intermediate ones.
3. 'For thou, O Lord, alone knowest the purport, the rites, and the knowledge of the soul, (taught) in this whole ordinance of the Self-existent, which is unknowable and unfathomable.'
4. He, whose power is measureless, being thus asked by the high-minded great sages, duly honoured them, and answered, 'Listen!'

5. This (universe) existed in the shape of Darkness, unperceived, destitute of distinctive marks, unattainable by reasoning, unknowable, wholly immersed, as it were, in deep sleep.
6. Then the divine Self-existent, indiscernible, (but) making (all) this, the great elements and the rest, discernible, appeared with irresistible (creative) power, dispelling the darkness.
7. He who can be perceived by the internal organ (alone), who is subtle, indiscernible, and eternal, who contains all created beings and is inconceivable, shone forth of his own (will).
8. He, desiring to produce beings of many kinds from his own body, first with a thought created the waters, and placed his seed in them.
9. That (seed) became a golden egg, in brilliancy equal to the sun; in that (egg) he himself was born as Brahman, the progenitor of the whole world.
10. The waters are called nara, (for) the waters are, indeed, the offspring of Nara; as they were his first residence (ayana), he thence is named Narayana [later name for Vishnu].
11. From that (first) cause, which is indiscernible, eternal, and both real and unreal, was produced that male (Purusha), who is famed in this world (under the appellation of) Brahman.
12. The divine one resided in that egg during a whole year, then he himself by his thought (alone) divided it into two halves;
13. And out of those two halves he formed heaven and earth, between them the middle sphere, the eight points of the horizon, and the eternal abode of the waters.
14. From himself (atman) he also drew forth the mind, which is both real and unreal, likewise from the mind egoism, which possesses the function of self-consciousness (and is) lordly;
15. Moreover, the great one, the soul, and all (products) affected by the three qualities, and, in their order, the five organs which perceive the objects of sensation.
16. But, joining minute particles even of those six, which possess measureless power, with particles of himself, he created all beings.
17. Because those six (kinds of) minute particles, which form the (creator's) frame, enter (asri) these (creatures), therefore the wise call his frame sarira, (the body.)
18. That the great elements enter, together with their functions and the mind, through its minute parts the framer of all beings, the imperishable one.
19. But from minute body (-framing) particles of these seven very powerful Purushas springs this (world), the perishable from the imperishable.
20. Among them each succeeding (element) acquires the quality of the preceding one, and whatever place (in the sequence) each of them occupies, even so many qualities it is declared to possess.
21. But in the beginning he assigned their several names, actions, and conditions to all (created beings), even according to the words of the Veda.
22. He, the Lord, also created the class of the gods, who are endowed with life, and whose nature is action; and the subtle class of the Sadhyas, and the eternal sacrifice.

23. But from fire, wind, and the sun he drew forth the threefold eternal Veda, called Rig, Yajur, and Sama, for the due performance of the sacrifice.

24. Time and the divisions of time, the lunar mansions and the planets, the rivers, the oceans, the mountains, plains, and uneven ground.

25. Austerity, speech, pleasure, desire, and anger, this whole creation he likewise produced, as he desired to call these beings into existence.

26. Moreover, in order to distinguish actions, he separated merit from demerit, and he caused the creatures to be affected by the pairs (of opposites), such as pain and pleasure.

27. But with the minute perishable particles of the five (elements) which have been mentioned, this whole (world) is framed in due order.

28. But to whatever course of action the Lord at first appointed each (kind of beings), that alone it has spontaneously adopted in each succeeding creation.

29. Whatever he assigned to each at the (first) creation, noxiousness or harmlessness, gentleness or ferocity, virtue or sin, truth or falsehood, that clung (afterwards) spontaneously to it.

2. Source of dharma The meaning of *dharma*, as already mentioned, is not easy to pin down. Let us, then, allow the text itself to provide, if not a definition, at least an understanding. The translator here uses the phrase 'sacred law', which became standard for most later English translators and scholars. The translation is by George Bühler in 1886.

1. Learn that sacred law which is followed by men learned (in the Veda) and assented to in their hearts by the virtuous, who are ever exempt from hatred and inordinate affection.

2. To act solely from a desire for rewards is not laudable, yet an exemption from that desire is not (to be found) in this (world): for on (that) desire is grounded the study of the Veda and the performance of the actions, prescribed by the Veda.

3. The desire (for rewards), indeed, has its root in the conception that an act can yield them, and in consequence of (that) conception sacrifices are performed; vows and the laws prescribing restraints are all stated to be kept through the idea that they will bear fruit.

4. Not a single act here (below) appears ever to be done by a man free from desire; for whatever (man) does, it is (the result of) the impulse of desire.

5. He who persists in discharging these (prescribed duties) in the right manner, reaches the deathless state and even in this (life) obtains (the fulfilment of) all the desires that he may have conceived.

6. The whole Veda is the (first) source of the sacred law, next the tradition and the virtuous conduct of those who know the (Veda further), also the customs of holy men, and (finally) self-satisfaction.

7. Whatever law has been ordained for any (person) by Manu, that has been fully declared in the Veda: for that (sage was) omniscient.

8. But a learned man after fully scrutinising all this with the eye of knowledge, should, in accordance with the authority of the revealed texts, be intent on (the performance of) his duties.

9. For that man who obeys the law prescribed in the revealed texts and in the sacred tradition, gains fame in this (world) and after death unsurpassable bliss.

10. But by *sruti* (revelation) is meant the Veda, and by *smriti* (tradition) the Institutes of the sacred law: those two must not be called into question in any matter, since from those two the sacred law shone forth.

11. Every twice-born man, who, relying on the Institutes of dialectics, treats with contempt those two sources (of the law), must be cast out by the virtuous, as an atheist and a scorner of the Veda.

12. The Veda, the sacred tradition, the customs of virtuous men, and one's own pleasure, they declare to be visibly the fourfold means of defining the sacred law.

13. The knowledge of the sacred law is prescribed for those who are not given to the acquisition of wealth and to the gratification of their desires; to those who seek the knowledge of the sacred law the supreme authority is the revelation (*sruti*).

14. But when two sacred texts (*sruti*) are conflicting, both are held to be law; for both are pronounced by the wise (to be) valid law.

3. Four stages of life One of the most important dimensions of the dharmic code is the traditional four-fold structure to a man's life (women were not considered in this structure). A young man is first a student, then a householder, next a retired person ('forest-dweller') and finally an ascetic. Also, in each stage, certain goals or pursuits were considered appropriate. Dharma governs the first three stages, sensual pleasure (*kama*) and wealth (*artha*) are associated mainly with the householder stage, while release (*moksa*) is the goal of the final stage. The extract given below (from a translation by George Bühler in 1886) begins with the end of the householder stage, when a man should decide to go into retirement, or 'enter the forest.'

1. A twice-born man [a member of the top three castes], who has thus lived according to the law in the order of householders, may, taking a firm resolution and keeping his organs in subjection, dwell in the forest, duly (observing the rules given below).

2. When a householder sees his (skin) wrinkled, and (his hair) white, and the sons of his sons, then he may resort to the forest.

3. Abandoning all food raised by cultivation, and all his belongings, he may depart into the forest, either committing his wife to his sons, or accompanied by her.

4. Taking with him the sacred fire and the implements required for domestic (sacrifices), he may go forth from the village into the forest and reside there, duly controlling his senses.

5. Let him offer those five great sacrifices according to the rule, with various kinds of pure food fit for ascetics, or with herbs, roots, and fruit.

6. Let him wear a skin or a tattered garment; let him bathe in the evening or in the morning; and let him always wear (his hair in) braids, the hair on his body, his beard, and his nails (being unclipped).

7. Let him perform the Bali-offering with such food as he eats, and give alms according to his ability; let him honour those who come to his hermitage with alms consisting of water, roots, and fruit.

8. Let him be always industrious in privately reciting the Veda; let him be patient of hardships, friendly (towards all), of collected mind, ever liberal and never a receiver of gifts, and compassionate towards all living creatures.

[...]

11. With pure grains, fit for ascetics, which grow in spring and in autumn, and which he himself has collected, let him severally prepare the sacrificial cakes and the boiled pulses, as the law directs.

12. Having offered those most pure sacrificial viands, consisting of the produce of the forest, he may use the remainder for himself, (mixed with) salt prepared by himself.

13. Let him eat vegetables that grow on dry land or in water, flowers, roots, and fruits, the productions of pure trees, and oils extracted from forest-fruits.

14. Let him avoid honey, flesh, and mushrooms growing on the ground (the vegetables called) *bhustrina*, and *sigruka*, and the *sleshmantaka* fruit.

15. Let him throw away in the month of *Asvina* the food of ascetics, which he formerly collected, likewise his worn-out clothes and his vegetables, roots, and fruit.

16. Let him not eat anything (grown on) ploughed (land), though it may have been thrown away by somebody, nor roots and fruit grown in a village, though (he may be) tormented (by hunger).

17. He may eat either what has been cooked with fire, or what has been ripened by time; he either may use a stone for grinding, or his teeth may be his mortar.

18. He may either at once (after his daily meal) cleanse (his vessel for collecting food), or lay up a store sufficient for a month, or gather what suffices for six months or for a year.

19. Having collected food according to his ability, he may either eat at night (only), or in the day-time (only), or at every fourth meal-time, or at every eighth.

4. The Duty of Kings While all Hindus considered *dharma* to govern their lives, kings were under a special obligation to uphold its tenets. As the protector of the realm, as the head of state and as the embodiment of divine rule on earth, a ruler's actions were of greater consequence than those most people. If a king does not adhere to moral conduct, the texts often ask, then who will? As scholars have pointed out, the word *dharma* itself derives from a root that means 'to uphold, to bear, to support.' It is frequently mentioned in the *Manu Smirti* itself that this responsibility of the king is doubly important in the current age, the *Kali Yuga*, which is characterised by immorality and impiety. This excerpt comes from the translations by George Bühler in 1886.

1. I will declare the duties of kings, (and) show how a king should conduct himself, how he was created, and how (he can obtain) highest success.

2. A *Kshatriya*, who has received according to the rule the sacrament prescribed by the *Veda*, must duly protect this whole (world).

3. For, when these creatures, being without a king, through fear dispersed in all directions, the Lord created a king for the protection of this whole (creation),

4. Taking (for that purpose) eternal particles of *Indra*, of the Wind, of *Yama*, of the Sun, of Fire, of *Varuna*, of the Moon, and of the Lord of wealth (*Kubera*).

5. Because a king has been formed of particles of those lords of the gods, he therefore surpasses all created beings in lustre;

6. And, like the sun, he burns eyes and hearts; nor can anybody on earth even gaze on him.

7. Through his (supernatural) power he is Fire and Wind, he Sun and Moon, he the Lord of justice (Yama), he Kubera, he Varuna, he great Indra.
8. Even an infant king must not be despised, (from an idea) that he is a (mere) mortal; for he is a great deity in human form.
9. Fire burns one man only, if he carelessly approaches it, the fire of a king's (anger) consumes the (whole) family, together with its cattle and its hoard of property.
10. Having fully considered the purpose, (his) power, and the place and the time, he assumes by turns many (different) shapes for the complete attainment of justice.
11. He, in whose favour resides Padma, the goddess of fortune, in whose valour dwells victory, in whose anger abides death, is formed of the lustre of all (gods).
12. The (man), who in his exceeding folly hates him, will doubtlessly perish; for the king quickly makes up his mind to destroy such (a man).
13. Let no (man), therefore, transgress that law which favourites, nor (his orders) which inflict pain on those in disfavour.
14. For the (king's) sake the Lord formerly created his own son, Punishment, the protector of all creatures, (an incarnation of) the law, formed of Brahman's glory.
15. Through fear of him all created beings, both the immovable and the movable, allow themselves to be enjoyed and swerve not from their duties.
16. Having fully considered the time and the place (of the offence), the strength and the knowledge (of the offender), let him justly inflict that (punishment) on men who act unjustly.
17. Punishment is (in reality) the king (and) the male, that the manager of affairs, that the ruler, and that is called the surety for the four orders' obedience to the law.
18. Punishment alone governs all created beings, punishment alone protects them, punishment watches over them while they sleep; the wise declare punishment (to be identical with) the law.
19. If (punishment) is properly inflicted after (due) consideration, it makes all people happy; but inflicted without consideration, it destroys everything.
20. If the king did not, without tiring, inflict punishment on those worthy to be punished, the stronger would roast the weaker, like fish on a spit;
21. The crow would eat the sacrificial cake and the dog would lick the sacrificial viands, and ownership would not remain with any one, the lower ones would (usurp the place of) the higher ones.
22. The whole world is kept in order by punishment, for a guiltless man is hard to find; through fear of punishment the whole world yields the enjoyments (which it owes).

[another chapter from the same translation]

1. A king, desirous of investigating law cases, must enter his court of justice, preserving a dignified demeanour, together with Brahmanas and with experienced councillors.

2. There, either seated or standing, raising his right arm, without ostentation in his dress and ornaments, let him examine the business of suitors,
3. Daily (deciding) one after another (all cases) which fall under the eighteen titles (of the law) according to principles drawn from local usages. and from the Institutes of the sacred law.
4. Of those (titles) the first is the non-payment of debts, (then follow), (2) deposit and pledge, (3) sale without ownership, (4) concerns among partners, and (5) resumption of gifts,
5. (6) Non-payment of wages, (7) non-performance of agreements, (8) rescission of sale and purchase, (9) disputes between the owner (of cattle) and his servants,
6. (10) Disputes regarding boundaries, (11) assault and (12) defamation, (13) theft, (14) robbery and violence, (15) adultery,
7. (16) Duties of man and wife, (17) partition (of inheritance), (18) gambling and betting; these are in this world the eighteen topics which give rise to lawsuits.
8. Depending on the eternal law, let him decide the suits of men who mostly contend on the titles just mentioned

[...]

15. The king obtains one half of ancient hoards and metals (found) in the ground, by reason of (his giving) protection, (and) because he is the lord of the soil.

5. Crime and punishment As mentioned earlier, the concept of *dharma* is flexible and adaptable, more a sense of morality than a legal code. This has been the cultural understanding of the concept, while the text itself does actually contain specific instructions concerning crimes, court procedures and punishments, as shown in the translation below by George Bühler in 1886.

47. When a creditor sues (before the king) for the recovery of money from a debtor, let him make the debtor pay the sum which the creditor proves (to be due).

48. By whatever means a creditor may be able to obtain possession of his property, even by those means may he force the debtor and make him pay.

49. By moral suasion, by suit of law, by artful management, or by the customary proceeding, a creditor may recover property lent; and fifthly, by force.

50. A creditor who himself recovers his property from his debtor, must not be blamed by the king for retaking what is his own.

51. But he who denies a debt which is proved by good evidence, he shall order to pay that debt to the creditor and a small fine according to his circumstances.

52. On the denial (of a debt) by a debtor who has been required in court to pay it, the complainant must call (a witness) who was present (when the loan was made), or adduce other evidence.

53. (The plaintiff) who calls a witness not present at the transaction, who retracts his statements, or does not perceive that his statements (are) confused or contradictory;

54. Or who having stated what he means to prove afterwards varies (his case), or who being questioned on a fact duly stated by himself does not abide by it;

55. Or who converses with the witnesses in a place improper for such conversation; or who declines to answer a question, properly put, or leaves (the court);
56. Or who, being ordered to speak, does not answer, or does not prove what he has alleged; or who does not know what is the first (point), and what the second, fails in his suit.
57. He also who says 'I have witnesses,' and, being ordered to produce them, produces them not, the judge must on these (same) grounds declare to be non-suited.
58. If a plaintiff does not speak, he may be punished corporally or fined according to the law; if (a defendant) does not plead within three fortnights, he has lost his cause.
59. In the double of that sum which (a defendant) falsely denies or on which (the plaintiff) falsely declares, shall those two (men) offending against justice be fined by the king.
60. (A defendant) who, being brought (into court) by the creditor, (and) being questioned, denies (the debt), shall be convicted (of his falsehood) by at least three witnesses (who must depose) in the presence of the Brahmana (appointed by) the king.
61. I will fully declare what kind of men may be made witnesses in suits by creditors, and in what manner those (witnesses) must give true (evidence).
62. Householders, men with male issue, and indigenous (inhabitants of the country, be they) Kshatriyas, Vaisyas, or Sudras, are competent, when called by a suitor, to give evidence, not any persons whatever (their condition may be) except in cases of urgency.
63. Trustworthy men of all the (four) castes (varna) may be made witnesses in lawsuits, (men) who know (their) whole duty, and are free from covetousness; but let him reject those (of an) opposite (character).
64. Those must not be made (witnesses) who have an interest in the suit, nor familiar (friends), companions, and enemies (of the parties), nor (men) formerly convicted (of perjury), nor (persons) suffering under (severe) illness, nor (those) tainted (by mortal sin).
65. The king cannot be made a witness, nor mechanics and actors, nor a student of the Veda, nor (an ascetic) who has given up (all) connexion (with the world).

6. Caste discrimination The caste system derives its authority from the Vedas, which explains the four social categories as parts of a primal man. A fifth category, the non-caste or outcaste Untouchables, now called Dalits, emerged later. As a commentary and explanation of the Vedas, it fell to the *Dharma Sastras* to spell out what this hierarchy meant in terms of social interaction. As we read below, the *Manu Smriti* contains precise and sometimes cruel examples of discrimination against the Shudras, and worse was to follow for Dalits. This selection is taken from the translation by George Bühler in 1886.

1 For the welfare of humanity the supreme creator Brahma, gave birth to the Brahmins from his mouth, the Kshatriyas from his shoulders, the Vaishyas from his thighs and Shudras from his feet.

2. Let the first part of a Brahman's name denote something auspicious, a Kshatriya's be connected with power, and a Vaishyas with wealth but a Shudra's express something contemptible.

[...]

4. The second part of a Brahmin's name shall be a word implying happiness, of a Kshatriya's (a word) implying protection, of a Vaishya's a term expressive of thriving and of a Shudra's an expression denoting service.

5. A hundred-year-old Kshatriya must treat a ten year old Brahmin boy as his father.

6. The Brahmin should never invite persons of other varnas for food. In case, the latter begs the Brahmin for food, the Brahmin may give them some left-over. Even these left-over must be served not by the Brahmin but by his servants outside the house.

7. He who instructs Shudra pupils and he whose teacher is a Shudra shall become disqualified for being invited to a shradha [ritual].

8. A Shudra is unfit of receive education. The upper varnas should not impart education or give advice to a Shudra. It is not necessary that the Shudra should know the laws and codes and hence need not be taught. Violators will go to hell.

[...]

10. A Brahmin must never read the Vedas in the presence of the Shudras.

[...]

12. A Brahmin who is only a Brahmin by decent i.e., one who has neither studied nor performed any other act required by the Vedas may, at the king's pleasure, interpret the law to him i.e., act as the judge, but never a Shudra (however learned he may be).

13. The Kingdom of that monarch, who looks on while a Shudra settles the law, will sink low like a cow in the morass.

14. A Brahmin can order a Shudra to serve him without any remuneration because the Shudra is created by Brahma to serve the Brahmins. Even if a Brahmin frees a Shudra from slavery the Shudra continue to be a slave as he is created for slavery. Nobody has the right to free him.

15. A Shudra who insults a twice born man with gross invectives shall have his tongue cut out; for he is of low origin.

16. If he mentions the names and castes of the (other castes) with contumely, an iron nail, ten fingers long, shall be thrust red hot into his mouth.

17. If a Shudra arrogantly presumes to preach religion to Brahmins, the king shall have poured burning oil in his mouth and ears.

18. A Shudra who has an intercourse with a woman of the higher caste guarded or unguarded shall be punished in the following manner; if she was unguarded, he loses the offending part; if she was guarded then he should be put to death and his property confiscated.”

19. A Brahmin may compel a Shudra, whether bought or unbought, to do servile work for he is created by the creator to be the slave of a Brahmana.

20. No Shudra should have property of his own, He should have nothing of his own. The existence of a wealthy Shudra is bad for the Brahmins. A Brahman may take possession of the goods of a Shudra.

21. A Brahmin may seize without hesitation, if he be in distress for his subsistence, the goods of his Shudra. The Shudra can have only one occupation. This is one of the inexorable laws of Manu. says Manu.

22. A Shudra who wants to just fill his stomach may serve a Vaishya. If he wants a permanent means of living he can serve a Kshatriya. But if he wants to go to heaven or wants higher or superior birth in the next generation he must serve a Brahmin.

23. The most sacred duty of a Shudra is to serve the Brahmins, always, reciting the words "Brahman" with utmost devotion. Such a Shudra will get salvation. Otherwise he will die a worst death and will go to the worst hell.

24. But let a (Shudra) serve Brahmins, either for the sake of heaven, or with a view to both (this life and the next) for he who is called the servant of a Brahman thereby gains all his ends.

25. The service of Brahmins alone is declared (to be) an excellent occupation for a Shudra for whatever else besides this he may perform will bear him no fruit.

7. Women The status of women in classical India, when the *Dharma Sastras* were composed, appears to have declined in comparison with their status as gleaned from the Vedas. In those earlier texts, women were said to own and inherit property, including the vital asset of land. By about 500 CE, however, when social and family life was codified and rigidified in the Law Books, women's status could be summed up by the often-quoted statement from the *Manu Smriti*: 'Her father guards her in her childhood; her husband guards her in her youth; and her sons guard her in her old age. A woman is not fit to act on her own.' This does not mean, of course, that some women were not more independent and had status within a wealthy family or that many played full roles in society. For the most part, however, women were considered a burden on a family, to be sold off in marriage and to virtually die themselves if they were widowed. This extract from the *Manu Smriti* comes from the translation by Patrick Olivelle in 2004.

The man to whom her father or, with her father's consent, her brother gives her away--she should obey him when he is alive and not be unfaithful to him when he is dead. The invocation of blessings and the sacrifice to Prajapati are performed during marriage to procure her good fortune; the act of giving away is the reason for his lordship over her.

In season and out of season, in this world and in the next, the husband who performed the marriage consecration with ritual formulas always gives happiness to his woman. Though he may be bereft of virtue, given to lust and totally devoid of good qualities, a good woman should always worship her husband like a god.

For a woman, there is no independent sacrifice, vow or fast; a woman will be exalted in heaven by the mere fact that she has obediently served her husband. A good woman, desiring to go to the same world as her husband, should never do anything displeasing to the man who took her hand, whether he is alive or dead.

After her husband is dead, she may voluntarily emaciate her body by eating pure flower, roots, and fruits; but she must never mention even the name of another man. Aspiring to that unsurpassed Law of women devoted to a single husband, she should remain patient, controlled, and celibate until her death.

Untold thousands of Brahmins who have remained celibate from their youth have gone to heaven without producing offspring to continue their family line. Just like these celibates, a good woman, though she be sonless, will go to heaven when she steadfastly adheres to the celibate life after her husband's death.

When a woman is unfaithful to her husband because of her strong desire for children, she is disgraced in this world and excluded from the husband's world. No recognition is given here to offspring fathered by another man or begotten on another's wife; nor is it taught anywhere that a good woman should take a second husband.

When a woman abandons her own husband of lower rank and unites with a man of higher rank, she only brings disgrace upon herself in the world and is called 'a woman who has had a man before'. By being unfaithful to her husband, a woman becomes disgraced in the world, takes birth in a jackal's womb, and is afflicted with evil diseases.

A woman who controls her mind, speech, and body and is never unfaithful to her husband attains the world of her husband, and virtuous people call her a 'good woman'. By following this conduct, a woman who controls her mind, speech and body obtains the highest fame in this world and the world of her husband in the next.

Reading

J. Duncan Derrett, *Dharmasastra and Juridical Literature*, 1973

Patrick Olivelle, *The Law Code of Manu*, 2004

Wendy Doniger, *Against Dharma: Dissent in the Ancient Indian Sciences of Sex and Politics*, 2018