IJCRT.ORG ISSN : 2320-2882

INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

FUNDAMENTAL RULES OF CRIMINAL PROCESS: REFLECTIONS OF VEDIC JURISPRUDENCE IN CONTEMPORARY LAW

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Abstract: The modern criminal jurisprudence distinguishes criminal justice system under two broad categories, inquisitorial and accusatorial. The former is a fact-finding process whereas the latter concentrates on truth finding. However, the element which connects both the system in common would-be principles relating to evidence in a criminal trial. The guilt of the accused is decided by the judge or the jury on the basis of oral or documentary evidence. The origin of classification of evidences can be traced into the ancient Indian jurisprudence. *Yajnavalkya* classified proof into three categories *sakshi, lekhya and bhukti*. This attempt of classifying evidences was to bring about more clarity to the principles of evidence under *Manusmriti*. Further attempts were made by *Narada, Brihaspati* and *Katyayana* in explaining principles relating to rule of evidence for proving the guilt of the person. Justice delivery in ancient India was not too technical as we see today. Nevertheless, there were rules relating to admission, denial and confession. The entire process was designed enabling the rights of the accused to hear, the right of the accused to know the evidences against him and to defend himself. Many of these enumerated principles and practices carved under Vedic jurisprudence still forms the cardinal principles under contemporary jurisprudence. This paper explores the sway of Vedic Jurisprudence in principles relating to evidence such as kinds of evidence, admission, confession and rights of the accused under contemporary law.

***Index Terms*- Criminal Trial, Kinds of evidences, Vedas and Shastras, Contemporary principles of evidence, Rights of the accused**

I. INTRODUCTION

> "The law is the last result of human wisdom acting upon human experience for the benefit of the public"
>
> Samuel Johnson

The outlook of society towards law is always dependent on how a person is positioned in the society. His emotions, be it happiness, sorrow, stress, will always be an influencing factor in understanding law. Therefore, understanding the true nature, object and feature of a law is just like opening a Pandora box. Ever since the human existence, be it in any *yuga* as understood under Vedic relics, understanding law has always been a major field of academic discussion. The most fascinating discourse is that law has always been perceived as a tool to bring social order. Unlike, positivist, for whom law is essentially a command of the sovereign, be it a political sovereign as understood by Austin, or a norm deriving from a superior source as defined by Kant, for ancient Indian philosophers' law was ethical notion of righteousness. However, this li[1]ne of understanding has largely influenced the philosophers in the later period of time, especially in the conception of natural law theory and sociological school.

A great deal has been made in all times in understanding the concept of justice. The wider scope and understanding on justice have necessitated the academia to explore all the nuances about the concept of justice. The concept of substantial and procedural justice was the by- product such discussion over the period of time. The idea that means shall also be as good as its end may be philosophical backing for understanding procedural justice, which has been a pillar of strength in effective criminal justice administration. Though the term 'procedural justice' is relatively new, its impression can be seen even in the Vedic and ancient Indian laws. This paper is an attempt to trace out the glimpse and influence of Vedic and ancient Indian laws in the contemporary laws and theory of justice and fairness with respect to principles of evidence and fair trial.

II. The Idea Of Law As A Social Order

The conceptualisation of law as a social order will date back to time immemorial. The ancient Indian philosophy never considered law as a command of sovereign. The manifestation of law under ancient Indian jurisprudence is believed to be *Rit*.[2]*Rit* in its simplest form signifies straight and right conduct. In addition to this, Rit envisages a life against crooked or tortious path of life.[3] The essence that binds the social order throughout the world is the same as that is reflected in the meaning of *Rit*.[4]Thus, *Rit* in an ethical sense is the right way of conduct, whereas in legal sense to maintain the order and punish the person who goes against the *Rit*. As, the time passed by the notion of *Rit* was found to be inappropriate predominantly due to its rigid nature[5]. A dilution was made into the rigid concept of *Rit* by introducing the concept of *'Vratam'*. *Vratam*, in contrary to Rit could be violated. Finally, Rit got replaced by *'Dharma'*.

i. The Concept of Dharma

The conceptualisation of dharma was where the *Rit*- era ended. The era of social classification[6] as the creator manifested was foundation of dharma. The only possible way to follow law and establish social order was to choose the function according to one's power and to acclimatize those into best possible manner.[7] The concept of Dharma is do just. This attribution of dharma and social classification has indeed become a strong part of western jurisprudence.[8]The central point of Socrates' idea of ideal state was based on specialisation.[9]Social classification and thus the division of labour has been the cornerstone in understanding just and ideal state. The varna system which prevailed in the Indian ethos as conceived by Vedic and Ancient jurisprudence has always been seen as discrimination based on cast and colour. However, the basic idea such classification put forth is the notion of society based on division of labour. This formulation has been the central idea in the conceptualisation of ideal state by Socrates and Plato. Similarly, Plato's notion of justice also was very similar to that of Dharma. Both foresees, conditioning of proper society.[10]

ii. Punishment or *Danda*: Tool to ensure *Dharma*

The understanding of ideal state and ideal behaviour stands as a Utopian idea. A society of heterogeneous humans cannot be expected to function in such a smooth manner. Deviations from a generally accepted pattern of behaviour are certain to happen in an assorted society. Law *per se* is not only confined with preservation of order. Rather, it has the objective of administration of justice. Administration of justice can be ensured by taking coercive actions, normally known as punishments or *danda*. The object of danda as manifested by ancient jurisprudence is to 'put a person back on the right path' and it is the duty of the king to do so.[11]The essence of deviation from an order and sanction for going against the order as envisaged by the Vedic norms has also contemplated in the western jurisprudence.[12]Therefore, keeping the person away from *an-rit* is the primary obligation of the king and danda is the only possible way to ensure that all are abiding in accordance with *rit.*

III. PROCEDURAL LAW AND JUSTICE

i. Theory of Justice

The understanding of justice in ancient India is more of a personal kind. Manu characterises justice as the only friend who accompanies the man even after the death.[13]The responsibility of destruction of justice by way injustice is not limited to the perpetrator of the unjust act. Rather all person(s) involved in the overt act in disguise of justice delivery system are also equally guilty for the destruction of justice.[14]The modern jurisprudence however has saved the judges from being guilty for the destruction of justice especially with regard to wrongful acquittals and conviction. The exclusion of judges and the sovereign from the sphere of responsibility of unjust act, could be because, in the modern process of criminal justice administration as understood by adversarial system, the role of a judge is limited to fact finding rather than finding the truth. For instance, the judge's role is determined on the basis of the evidences and other relevant records placed before him, whether 'A' killed 'B' or not. Who killed 'A' is not the question before him. Therefore, this exonerates him as well as the state from the portion of guilt of injustice caused in case of wrongful conviction of A.

However, the Vedic understanding of punishing the actors responsible for miscarriage of justice is not completely absent in the modern realm. Fragments of these ideas can be seen in the present criminal laws as perjury, fabrication and falsification of evidences.[15] Therefore, corresponding formulations were made available in the procedural laws in ancient India, so as to preserve dharma. These included rules of witnesses, documentary evidence, rules of limitation, rules of conduct in judicial trial, decisions of trial court and appeal.

ii. Features of Procedural Laws in Ancient India

The ancient Indian laws were infused with the aspect of dharma in all its literal sense. Predominance was given to the role of judges and therefore, a great degree of integrity and virtue were bestowed upon them.[16] Impartiality[17] and the adherence to the moral etiquettes[18] is regarded as an essential quality of a judge then and even today. Judicial process[19] as understood by Vedic scholars were so streamlined and can be a path in understanding various principles and steps involved in judicial process even today. The narration of *Vyavahara pada* by Shukrahas even paved a way for understanding at what point a judicial process begins.[20] There are nearly twelve basic points relating to procedural law,[21] out of which the principles of evidence and fair trial in a criminal process will be discussed in subsequent portions.

iii. Principles of Evidence and Fair Trial in Criminal Trial

Concept of Innocence and Burden of Proof

The cardinal rule that every person shall be presumed be innocent unless proven guilty has its origin in Vedic period. According to *Narada*, the conviction in a criminal trial shall be diligently made. If not taken proper caution, it will lead to greater catastrophe.[22]A trial without proper consideration may let go the thieves and convict an innocent as in the case of *Rishi Mandavya*.[23]The story of *Rishi Mandavya* can be seen as the origin of the presumption of innocence. The aspect that mere silence is not an indication of a person's guilt which has a predominant space in modern day jurisprudence could also be inferred.[24]Therefore, conclusive proof has to be brought in order to make person guilty of any offence.[25]

Who has the burden of proof has always been a sensitive question in ancient jurisprudence. *Vyasa*, makes it clear that there are two situations when defendant has to adduce evidence. First, is in the case of *resjudicata or prangnyaya* as called in ancient India. The second situation is when the defendant takes any special defence. In all other circumstances the plaintiff shall begin and shall adduce evidence.[26] Therefore, the Vedic jurisprudence has played a significant role in moulding the principles governing presumption of innocence and burden of proof and onus of proof.[27]

Kinds of Evidences

The ancient legal system recognised mainly three kinds of evidences, namely *Likhitham*, *Buktih* and *Sakshinam* which means documents, possession and witnesses or oral evidences respectively.[28] The present Indian legal system recognises two kinds of evidence i.e., oral and document.[29] Oral evidence of a witness always played a great role in a criminal trial irrespective of the period. Therefore, the oral testimony has been subjected to all possible scrutiny. Ancient Indian jurisprudence has elaborately dealt with the aspect of

oral evidence. Need was felt even then to test the reliability of the oral depositions made by the witnesses. This resulted in enumerating qualifications of witness to decide as to whether his depositions are admissible in the courts. One of the important features among those is the character of the witness. The persons convicted of perjury and whose character has been tarnished by mortal sins are disqualified from becoming a competent witness.[30] When it comes to modern day laws governing witnesses, all persons are competent witnesses. Exceptions have been made only on the grounds of incapability in providing with rational answers to the questions put forth to them in a trial.[31]The ancient laws have also ousted minors and an unsound person from the category of competent witnesses.[32]The distinguishing feature is that according to Vedic law evidences of what is seen or heard is admissible.[33]The ancient law in essence does not regard hearsay as inadmissible evidence. Hearsay evidence could be used in criminal trial in more liberal manner when compared to present day laws governing evidence in a criminal trial. The modern law hearsay evidences are limited in application. Hearsay evidences are admissible subject certain conditions.[34]

The Process of Collection of Evidence- Investigation

While discussing the principles of evidence and the aspect of fair trial, it is essential to throw some light on the process of collection of evidence, i.e., investigation.[35] Even in ancient period a proper investigation into a crime was taken as an essential element of criminal justice system.[36]*Arthashastra* also gives an elaborate process by which collection of evidence is made possible. It can be inspection of crime scene, arrest of the suspects, interrogation, scientific examination in case of unnatural death, examination of witnesses etc.[37]Therefore, there exists a large degree of similarity on the aspect of investigation in both these eras.

The point of significant distinction is that, if the statement proving the innocence of the accused is not corroborated, then the accused can torture to elicit a confession.[38]This aspect is purely against the modern jurisprudence. In the modern system, the constitutional provisions and the international documents guarantee the right against custodial torture.[39]

IV. CONCLUSION

At the outset, the notion of law as a social order was analysed in the light of Vedic law. It could be analysed that prior to the understanding dharma as a foundation of law and justice, the concept of *rit* was the governing thread of the men and society. When compared with dharma, *rit* is more rigid and individual centric. *Rit* postulates the general conduct of an individual in a society, whereas dharma can be understood as guideline to ensure righteous action. It was also observed that over the period of time *rit* lost its glory and the concept was further diluted so as to encompass excusable and non- excusable conduct.

The aim of law in a civilised society is to ensure justice. The concept of dharma was also moulded to ensure justice and fairness in the society. The Vedic law, tried to achieve societal justice by attributing activities to men based on his birth. Popularly known *chatur-varna* system was compared with the idea of justice as postulated by Plato while discussing social contract theory. Thus, justice seen in the light of classification of men was not only limited to Vedic times, but it had also influenced ancient Greek and western philosophers.

Criminal justice administration has always been a central topic of discussion of all times. *Yajnavalkya*, *Narada*, *Manu* and at later point of time *Kautilya* has propounded various norms and principles governing crime investigation, kinds of evidence and principles such as presumption of innocence, burden of proof and trial before an impartial authority. A lot of principles relating justice and fairness, which is understood under the title of natural justice today, have been a part and parcel of Vedic law. However, few exceptions regarding hearsay evidences and torture for getting confession has been kept outside the realm of modern jurisprudence due to changing dimension of human behaviour and human rights jurisprudence. However, throughout the discourse of criminal justice administration, especially to the area relating principles of evidence including fair trial, Vedic law has played a significant part in moulding the contemporary jurisprudence.

REFERENCES

[2]S.K. Purohit, *Ancient Indian Legal Philosophy Its Relevance to Contemporary Jurisprudential Thought,* (Deep and Deep Publications Pvt. Ltd., I edition, 1994) at 18

[3]*Id* at 19

[44]S Radhakrishnan and Charles A Moore (eds), *A Source Book in Indian Philosophy,* (Princeton University Press, I edition, 1989) at 24 'Riht' in old English, 'Recht' in German, 'Rectus' in latino, 'Droit' in French and 'Diritto' in Italian.

[5]*Supra* n. 2, As observed by S K Purohit Rit was suitable only to govern a simple collective life where the procedure was rudimentary and the trial must have been mechanically having its mode in ordeals,

[6]*Ibid,* The Chatur varna system; Intelligence, sacrifice, disinterested services are the characteristics of Brahmins. Valour, Chivalry, forgiveness, ability to rule are the characteristics of Kshatriyas. Trade, co-operation, agriculture and distribution of material wealth are the characteristics of Vaisyas. Undergoing manual labour and services are the characteristics of Sudras.

[7]R R Diwakar, *Upanishads in Story and Dialogue*, (Bharatiya Vidya Bhavan, I edition, 1964) at 32

[8] Plato classifies men into four categories based on the function they had to perform in the society. First, men of gold for the composition of rulers, men of silver for soldiers, men of iron and brass for farmers and craftsmen.

[9] Rex Martin, The Ideal State in Plato's Republic, History of Political Thought, Spring Vol 2 (1) pp 1-30 at 2; The ideal state for Socrates is based on principle of division of labour.

[10]Justice is related to the citizen's sense of duty. Citizens are classified in to four sets and they are expected to perform those functions only. The resulting righteousness is the true essence of justice.

[11]*Supra* n.2 at p. 26, Ynjnavalkya and Narad used the term *'Sthapyethpathi'* which means 'put him on the right path'. S Vardhachariar in his lectures on *The Hindu Judicial System* explains this concept in the light of interpretation given by *Mitakshara*; "having punished (a person) according to the nature of the wrong, the King must re- establish the person in the performance of *Swadharna*"

[12] John Locke idealises a state of nature where all are equal and are at a liberty. They recognise the law of nature and do not harm other people. However, self- preservation is always a factor. Locke does not completely rule out the notion of 'might is right' in his state of nature. This metaphor can be directly linked to the concept of *'Matsya Nyaya'* put forth by Manu. Therefore, the state shall punish the person who causes or attempts to cause harm. Such person can be seen as person who has deviated from ideal state of nature.

[13]Chakradhar Jha, *History and Sources of Law in Ancient India*, (Ashish Publishing House, I edition, 1986) at 171; Manu (Chapter 11)

[14]*Ibid,*Manu further explains that justice being violated destroys us and on the other hand if it is being preserved preserves everyone. "One quarter of the guilt of unjust decision falls on him who commits the illegal acts, one quarter on false witnesses, one quarter on the judges and one quarter on the King"

[15]Perjury is an offence recognised almost by all the countries. It punishes a person who is under the oath to tell the truth, wilfully lies. Similarly, fabrication and falsification of evidences are also seen a crime to the extent of awarding capital punishment if a person against whom such evidence is adduced is awarded with death sentence and is been executed based on such false or fabricated evidence. Also see, Secs. 191, 192, 193 and 194 of Indian Penal Code, 1860.

[16]*Supra* n. 12 at 191, The primary goal of Indian laws was to ensure effective justice, therefore various fundamentals of judicial trial was laid down by Manu. Of these integrity, knowledge, judicial statesmanship and impartiality were the essential qualifications of a judge.

[17] Impartiality can be understood in modern jurisprudence with the aid of two important maxims. First, *'Nemo judex in causa sua',* Nobody shall be the judge in his own case. Further, it contemplates three important forms of bias, which a judge shall never have while deciding a case viz, subject- matter bias, monetary bias and personal bias. Second, '*Audi alterum partum'* a judicial process shall never be concluded without giving both the parties to present their case before the judge. These two principles even in the modern era plays a great deal in both judicial and quasi- judicial processes as a fundamentals of natural justice principle.

[18]Moral etiquettes can be attributed as an essential quality of a judge can be explained on the basis of the disqualifications of judges attached with the removal of judges from the office. One of the grounds of removal is moral turpitude. It is seen that, if the allegation of moral turpitude is proved against a sitting judge of constitutional courts or of such tribunals or forums established under any law for time being in force, then such person shall be removed from his office.

[19]*Ibid* Judicial process was termed as *'Vyavahara'* in ancient texts.Shukra in Shukranti chapter IV defines judicial process (Vyavahara) as "The system by which the subject is setup towards lawfulness on judicial consideration of truth and falsehood and by which the object of coming at the truth in the dispute is attained is called vyavahara"

[20]*Ibid*, Shukranti Chapter IV, Prakaran- V RajadharamaNirupana Verse 64(2) and 65 (1); by vyavahara pada, Shukra meant footsteps of judicial process, i.e., when a person comes before a king to place his grievance regarding infringement of any of his rights going against the principles of Smriti or good conduct, it is where the law and judicial process comes into play.

[21]*Id* at 192, Process of approach to arrive at justice, Procedure of application of law, Rules of pleading including counter- claim, Res-judicata, Onus and burden of proof, Concept of innocence in criminal trial, Nature and characteristics of documents, Limitation, Adverse possession, Nature of judgment and Appeal.

[22]*Ibid*, Naradiya Manusamhita- 1:36

[23]*Ibid*, Rishi Mandavya was convicted and sentenced to death for the offence of theft. He was engaged in penance adopting a vow of silence. Some thieves who were followed by army men left the stolen property at the place of Mandavya. His conviction was based on two reasons, first recovery of stolen property from his premises and second, he did not answer to the questions put forth by the court. This action was highly criticised by the public for it being unjust as there was no legal trial. Subsequently the sentence was withdrawn.

[24]The right to silence is an indispensable right accorded to an accused by way of fundamental right under the constitution and by way of international conventions and documents. In India Art. 20(1) of the Constitution guarantees right against self- incrimination. An accused has every right to maintain silence to all the questions which are incriminatory in nature or those which are potentially incriminatory in nature and no adverse inference shall be made due to such silence. The author presents this analogy to establish that even if *Mandavya* have stolen the article, he could not be convicted just because he maintained silence. This analogy is based on the fact that the public outcry against conviction was based on appeal of want of proper trial.

[25]Kautilya, *Arthashastra* book IV Chapter VIII; As per the *Arthashastra* the production of conclusive proof should be insisted to prove the guilt of the accused. The term conclusive as understood in modern law is something which states the fact by itself, i,e., it cannot be rebutted. So, the degree of evidence necessary to prove the guilt of a person shall never give any loophole of doubt. This requirement of *'beyond any reasonable doubt'* as in today's jurisprudence could be inferred from this context.

[26] "In an answer containing res-judicata and special exemption, the defendant should adduce evidence, but in case of deniel the plaintiff has to begin. In case of admission, the proof is not necessary" *Haritha*, quoted in *Mitakshara* to verse 7(2) of Book II of *Yajnavalkya Smrithi*. Also see The Indian Evidence Act, 1872, s. 105; Burden of proving that the case of accused comes within exceptions: when a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the general exceptions in the Indian Penal Code, 1860 or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him and the court shall presume the absence of such circumstances.

[27]Indian Evidence Act, 1872, s. 101; Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. When a person is bound to prove existence of any fact, it is said that the burden of proof lies on that person.

[28]*Supra* n. 12., *Yajnavalkya* 11-22 (i)

[29] Indian Evidence Act, 1872, s. 3; Evidence: evidence means and includes-

(1) All statements which the court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry., such statements are called oral evidence.

(2) All documents including electronic records produced for the inspection of the court, such documents are called documentary evidence.

[30]*Supra* n. 12, at 198 *Yajnavalkya* II Verse. 64)

[31] The Indian Evidence Act, 1872, s. 118; the only class of people seen as incompetent are those who in the opinion of the court are prevented from understanding the questions, by tender years, extreme old age, diseases, whether of the body or mind, or any other cause of the same kind. As per *Yajnavalkya*, an old age person is not a competent witness.

[32]*Supra* n. 12; quoting *Yajnavalkya* has debarred any person deficient in organ of sense, a minor, an old man and an intoxicated person are not qualified to be a competent witness. However, when it comes to Indian Evidence Act, 1872, the explanation to Section. 118 assert that a lunatic is not an incompetent person to

testify. However, there can be a fetter to this general rule if he due to lunacy is prevented from understanding and giving a rational answer to the questions asked to them.

[33]*Supra* n. 12 at 199 Manusmriti, VIII 63,64,66,67,68,72 and 74

[34]E. G. Ewaschuk, "Hearsay Evidence" (1978) 16(2) Osgoode Hall Law Journal 407, "The general rule is that the witness may only testify as to first- hand knowledge. Hearsay evidence is usually taken to mean that a witness cannot testify that he has heard someone else ay something out of court." The aspect of heasay evidence was explained by the Indian Supreme Court in *Kalyan Kumar Gogoi* v. *Ashuthosh Agnihotri&Anr* 2007 (4) GLT 374and it was stated that "the term hearsay is used with reference to what is done or written as as to what is spoken and in its legal sense, it denotes that kind of evidence which does not derive its value solely from the credit given to the witness himself, but which rests also, in part, on the veracity and competence of some other person". The exception to hearsay evidence under Indian law are (a). Res Gestae under Sec. 6 of Indian Evidence Act, 1872 which deals with relevancy of facts forming part of same transaction, Admissions and Confession as provided under Ss. 17 to 23 and 24 to 33 respectively of the Act and Dying declaration as provided under Sec. 32 of the Act.

[35] Sec. 2(h), The Code of Criminal Procedure, 1973

[36]L. N. Rangarajan (ed.) *Kautilya The Arthashastra*, (Penguin Books, I edition, 1987) at 458, Kautilya explained the need of an effective investigation by giving three cardinal principles to it. They are:

a. No person shall be arrested for a crime committed more than three nights earlier, unless he is caught with the tools of the crime.
b. No one shall falsely accuse another of being a thief; doing so is a punishable offence.
c. Protecting a thief [by hiding him] is also a punishable offence.

[37]*Id* at 459, 460, 461; Also see *Rishbud Singh* v. *State of Delhi* AIR 1955 SC 196; *State of Madhya Pradesh* v. *Mubarak Ali* AIR 1959, SC 707, Investigation generally consists of the following steps:

1. Proceeding to the crime spot
2. Ascertainment of facts and circumstances of the case
3. Discovery and arrest of the suspected offender
4. Collection of evidence relating to commission of offence which may consist of (a) The examination of various persons (including the accused) and (b) search of places or seizure of things considered necessary for the investigation and to be produced at the time of trial.
5. Formation of the opinion as to whether on the materials collected there is a case to place the accused before the magistrate for trial and if so, taking the necessary steps for the same by the filing of a charge- sheet under Sec. 173 of the Code.

This highlights the features of an investigation in modern India. A close comparison of today's provision to that of ancient period will disclose large similarities in the process and purpose of investigation.

[38]*Id* at 463

[39] Constitution of India, Art. 21provides that "No person shall be deprived of his life and personal liberty except according to procedure established by law". In addition to this, the Supreme Court of India in the case of *Maneka Gandhi* v. *Union of India*,AIR 1978 SC 597; *Francis Coralie Mullin* v. *Union Territory of Delhi*, (1980) 2 SCR 557; *Olga Tellis*v. *Bombay Municipal Corporation*,1985 SCC (3) 545; *Unnikrishnan* v. *State of Andhra Pradesh*AIR 1993 SC 217, has expanded the meaning of life as "dignified life" rather than a mere animal existence. The procedure of deprivation of life or liberty must not be unfair, unreasonable or arbitrary. The procedure shall not be whimsical or fanciful. In addition to that the constitution of India guarantees right against self- incrimination. Art. 20 (3) provides that the accused shall not be compelled to witness against himself. The Indian Supreme Court while discussing the scope of Art. 20(3) during examination of witnesses in the case of *Nandini Sathpathy*v. *P.L Dani*(1978) 2 SCC 424,observed that "Physical threats or violence, psychological torture, atmospheric pressure, environmental coercion, and tiring interrogation by police are violations". In the case of *Raghbir Singh* v. *State of Haryana*, AIR 1980 SC 1087, the police used violence to force a confession from a suspect in the theft, the Court noted that when the defenders of the law violate human rights, the lives and liberty of citizens are in peril. Human rights violations take on a painful, traumatizing poignancy when they are committed by the police, an element of Government whose job is to keep the public safe rather than conduct heinous crimes against them. In *D K Basu*v. *State of West Bengal*, AIR 1997 SC 610,the Court observed that custodial torture is a naked violation of human dignity and degrading, destroying an individual's personality. It is a calculated assault on human dignity; civilisation takes a step backwards whenever human dignity is wounded.

The United Nations Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) was adopted by the UN in its General Assembly resolution 39/46 of 10 December 1984. This convention condemns torture, inhuman and degrading treatment by public officials. Torture includes variety of methods, including severe beating, electric shock, sexual abuse, rape, prolonged solitary confinement and deprivation of sleep, food or water. Moreover, torture is not limited to acts causing physical pain or injury. It also includes acts that cause mental suffering, such as through threats against family or loved ones.

The Arthashastra on the other hand has divided the suspects into two categories, first those who can be subjected to torture and the second is those who cannot be subjected to torture. For the second category, there is eighteen accepted forms torture comprising of four ordinary and fourteen serious ones. This includes strokes with cane, lashes with whip, suspension of body in up-side down position, water lube, pricking with needle, burning etc.

In addition to the constitutional protection and international laws, The Indian Evidence Act, 1872 does not regard the admission or confession given under threat, coercion as an admissible piece of evidence. Section. 24 of the Act declares that the confession made by an accused person is irrelevant in a criminal proceeding, if the making of the confession appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the accused person, proceeding from a person in authority and sufficient, in the opinion of the court to give the accused person grounds, which would appear to him reasonable, for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him. In addition to this as per Section 25 of the Act, confession to police officer not to be proved and according Section 26 of the Act, confession by accused while in police custody not to be proved against him.

This gives a substantial glimpse on paradigm shift in jurisprudence relating to admission and confession by resorting to torture and inhuman treatment from ancient law to modern law.