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***VIDHI AND NISHEDHA***



## VIDHI AND NISHEDHA

### 5.1 Introduction

In the *Mimansa* system of interpretation, the raw material to which its rules applied, consisted mainly of *Vedic* texts. But once the system was evolved it was utilised for the interpretation of material contained in works relating to other branches of learning, including law.<sup>1</sup> It is the method of *Mimansa*, rather than the matter to which it was applied, that seems to have invested it with a certain attraction. Its method is sound and its subject matter is of positive nature and, as has been said, in most cases, its reasoning is convincing.<sup>2</sup>

### 5.2 *Vedic* texts as classified by Jaimini

Jaimini, the founder of *Purva Mimansa*, has classified the texts of the *Vedas*<sup>3</sup> into (1) *Vidhi*, (2) *Nishedha*, (3) *Arthavada*, (4) *Namadheya*, and (5) *Mantra*.

- (1) A *Vidhi* is an obligatory text. It is positive in character.
- (2) A *Nishedha* (also called *Pratishedha*) is an obligatory text, but it is negative in character.
- (3) An *Arthavada* is a non-obligatory text, connected with a particular *Vidhi*. It is not a command or prohibition in itself, but is, rather, explanatory of the reason for another (substantive) command or prohibition, or illustrates it or explains its benefit.
- (4) A *Namadheya* is in the nature of a general definition and is not connected with any particular command or prohibition.
- (5) A *Mantra* is a peculiar class of texts, occurring only in the *Vedas* and need not be considered for the present purpose.

While the first two classes of texts mentioned above are substantive in nature (positive or negative), the next two are not substantive. In this manner, the first two can be distinguished from the third and the fourth. The third (*Arthavada*) is connected with some particular *Vidhi*, thus distinct from the fourth (*Namadheya*), which is in the nature of a general definition having a bearing upon the general scope of the subject.

An *Arthavada* is not allowed to control the meaning or force of a *Vidhi*, but can facilitate the understanding of a *Vidhi* and is thus its concomitant.<sup>4</sup>

### 5.3 *Vidhi* and the element of duty and sanction

Jaimini, in the very first two verses of his work,<sup>5</sup> tells us that the object of his

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1. Max Mueller, The Six Systems of Indian Philosophy, page 273.  
 2. Dr. Thibaut, Translation of Artha Sangraha, Introduction.  
 3. Sarkar, pages 36-37. Jaimini I. ii, 01 to 07.  
 4. Sarkar, page 38; Jaimini, I. ii-8.  
 5. Sarkar, pages 30, 33; Jaimini, I. i. 1, 2.

work is the study of duty (*Dharma*). And he explains that duty is a purpose which is inculcated by the command.

The “command” spoken of, is intended to refer to the passage of the scripture in which it is mentioned.<sup>1</sup> The “duty” spoken of here, necessarily leads us to the question of sanctions.

To stress the element of sanction (which is not explicit, though it is implicit in a command), writers on *Mimansa* have adopted a definition of *Vidhi* in these terms<sup>2</sup>

**"Aprapta parpako Vidhi".**

Translated into English, it means, “A *Vidhi* is that which puts one in a position which ordinarily one is not apt to get into”. What is meant is, that the command indicates the necessity of a compelling power. The command - “Maintain your forsaken wife”, - for example - urges the doing of something which the man would not otherwise do.

#### 5.4 Nishedha

Conversely, *Nishedha* is explained<sup>3</sup> as a prohibition against *raga prapti* - doing something by the impulse of some particular passion is prohibited. The classical illustration of a *Nishedha* in *Mimansa* literature is - “*Na Kalanjam Bhakshayet*” (Do not eat *Kalanja*, i.e. fermented food).<sup>4</sup> Other examples are -

(a) “*Na hinsyeta*” (Do not injure another).

(b) “*Nanritam Vadeta*” (Do not utter untruth).<sup>5</sup>

All these are regarded as absolute prohibitions.

#### 5.5 The relevance of *Vidhi*

The reason why scholars of *Mimansa* concentrated on *Vidhi* (injunction) may be explained at this stage. The main object of the persons engaged in this discipline was to interpret the *Vedic* texts. For this purpose, it became necessary to distinguish between what was mandatory and what was not. The object was to secure the correct performance of sacrificial ceremonies.<sup>6</sup> Since the content of these ceremonies is fixed by the injunctions (*Vidhi*) of the *Veda*, the *Mimansa* propounds rules which enable the scholar to recognise a true injunction and to determine its sense and significance. It has been pointed out that one reason why these rules were extended to the interpretation of legal doctrines was that the regulation of disputes was presented by the authors of the *Dharmashastra* as if it were a sacrificial act and hence the rules thereof must be scrupulously observed under pain of sin.<sup>7</sup>

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1. Dr. Ballantyne, *The Mimansa Aphorisms in Sanskrit and English*, page 4, as cited by Sarkar, page 30.
  2. Sarkar, page 39.
  3. Sarkar, Page 40.
  4. Sarkar, Pages 323, 324.
  5. *Vidhi Rasayana* (Banaras Series), page 123, cited by Sarkar, pages 123, 124.
  6. Lingat, *The Classical Law of India* (1973), page 149.
  7. Lingat, *The Classical Law of India* (1973), page 150.

### 5.6 Arthavada

For the purpose mentioned in the preceding discussion, it became also necessary to distinguish between a *Vidhi* and *Arthavada*. The former is a positive injunction, while the latter is only an explanation for it. An *Arthavada* does not express the will of the law maker, unlike the *Vidhi*. It is only an observation in the nature of a commentary, "just as if the law maker descended from his position as such, and condescended to point out the merit of the law laid down, from the point of view of the ordinary run of people".<sup>1</sup> If a thing is a requisite part and parcel of a *Vidhi* - what is called the *angangi* relation with the *Vidhi* - then it is itself of an authoritative character. But an *Arthavada*, according to the conservative theory, does not have an authoritative character, but only explains something else which has such a character. No doubt, according to the view of some writers, some *Vidhis* themselves create a liking for the command and such injunctive texts might not have any *Arthavada* texts relating to them. But, by and large, when a *Vidhi* has an *Arthavada* text related to it, it is assumed that the *Vidhi-vakya* does the work of only enjoining the act, while the task of creating a liking for the act is performed by the *Arthavada*. "The *Vidhi* has an expectancy for the *Arthavada*. The *Vidhi* and the *Arthavada* together form one sentence, so that the *Vidhi* has an expectancy for the *Arthavada*".<sup>2</sup>

### 5.7 Namadheya

In the *Mimansa* learning, one also finds the expression *Namadheya*. This is distinct from the injunction. It is regarded as an independent clause. It is not in the nature of a gloss on a *Vidhi*. "It is a statement made by the law maker in his character as such, and is in this sense authoritative; but it simply states what is what. Such a statement does not directly bear upon any particular *Vidhi*. By defining things, it serves to elucidate the main purpose of the *Vedic* law".<sup>3</sup>

### 5.8 Classification of Vidhi

For practical purposes, it became necessary to think of various classifications of *Vidhis*. Some of the modern studies of ancient Hindu Law, in fact, offer a detailed discussion of such classifications.<sup>4</sup> This became necessary because the primary object of the *Mimansa* system was the study of the injunction and the system had to determine and examine the different forms under which the injunction could present itself in the *Vedic* texts; and, accordingly, it undertook to define their respective scopes of application. Thus, "beside the primary injunction pure and simple (*utpatti-vidhi*), it distinguished also the injunction of application (*viniyoga-vidhi*) which fixes the relation between the principal rite and a subsidiary action; the injunction of employment (*prayoga-vidhi*) which fixes the order in

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1. Sarkar, pages 40,41.

2. G.V. Devasthali, *Mimansa: The Ancient Indian Science of Sentence Interpretation* (1959), page 8.

3. Sarkar, page 41.

4. Kane, History of *Hindu Dharmashastra*, Vol. V, pages 1228 to 1232.

which the different parts of the rite should be performed; the injunction of qualification (*adhikara-vidhi*) which fixes the conditions required if the doer of the action is to obtain the fruits of the ritual he has put into effect; the restrictive injunction (*niyama-vidhi*) which submits the doing of the act to determined conditions, excluding others which are equally possible; and the injunction of exclusive specification (*parisankhaya-vidhi*) which operates as a prohibition, and so forth.” These subtle distinctions furnish the *shastric* interpreter with ready-formed means to analyse and classify the precepts of the *smriti* and to define their nature and significance rigorously.”<sup>1</sup>

### 5.9 Practical application of the distinctions

The distinction between an obligatory text and mere gloss had practical consequences in many cases. If a text is a *Vidhi*, then it is mandatory. But if it is an *Arthavada*, then it is not. The controversy about adoption of an only son provides an example. Vasistha (XV.3) prescribed that one should neither receive nor give in adoption an only son. “For (he should stay) to continue the line of his ancestors”. The question may arise whether the consideration of the continuance of the line of ancestors is to be taken as a mere gloss or whether it is to be read as part of the main prohibition against the adoption of an only son. If it is read with the main prohibition, then the adoption of an only son, though it may be a sin on the part of the father, would not be invalid. This, in fact, was the view taken in Anglo-Hindu law after some debate. However, some of the writers on Hindu law treated the prohibition in question as an absolute one. Thus, Vijnanesvara (*Mit.*, on *Yaj.*, II.129-133), Nandapandita (*Dattaka-mimansa* IV.1.6), the author of the *Dattaka-chandrika* (I.27) and Nilakantha (*Vyav. may.*, IV.v.9, 16) pronounce in favour of absolute prohibition.

### 5.10 Basis of classification of *Vidhis*

Two main bases of classification of *Vidhis* are met within the *Mimansa* literature. The first is on the basis of the degree of obligatory force of the *Vidhi*, while the second is on the basis of the purpose thereof.

With reference to the degree of the obligatory force (in regard to positive injunctions), Jaimini classifies them into *Vidhi* proper, *Niyama* and *Parisankhya*. If a benefit to be derived from a *Vidhi* is not at all possible of being attained by other means, then it is mandatory. If such benefit can be partly attained by complying with the *Vidhi* and partly by other means, then it is imperfect and not absolute. If the benefit can be wholly attained by other means (though it can also be attained by following the *Vidhi*), then the *Vidhi* is a mere recital or statement of the benefit without any real obligatory force.<sup>2</sup> The later commentator Kumarila Bhat explains the distinction in these words:-

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1. Lingat, *The Classical Law of India* (1973), page 152.

2. Sarkar, pages 42, 43.

“A *Vidhi* tends to secure what is otherwise not attainable at all.”

“A *Niyama* tends to secure what is partially otherwise attainable.”

“A *Parisankhya* consists in a statement or recital as to a benefit which is commonly attainable in its entirety, either by acting according to the statement or by other means.”

Sarkar has expressed the effect of the above, in the language of the modern law, in the following form:-

- “1. A *Vidhi* is a perfect (imperative) command.
2. A *Niyama* is an imperfect (directory) rule.
3. A *Parisankhya* is a monitory precept.”

Thus, the direction “Take a goodly meal after the fasting on the 11th day of the moon”, is regarded as a *Niyama*, implying that the meal is to be taken unless one has a good reason for abstaining from it. In contrast, the direction “The flesh of animals whose feet are divided into five nails is eatable”, is an example of *Parisankhya*. It only means that one may eat such flesh and not that one shall eat it.

### 5.11 Comparison with modern rules of interpretation

The above distinction, based on the degree of force to be attributed to a particular direction, has obvious comparable situations in modern rules of interpretation. Rules of law which are mandatory and rules of law which are not mandatory but only directory, are well known in modern legal systems. Courts do not regard every statutory direction as nullifying action taken in contravention thereof. The use of the verb “shall” can still be regarded as directory. In the United States, where the legislative history is more frequently used than in other countries, there may be more occasions for adopting this approach. In the ultimate analysis, the problem will present itself as a problem of choice between literal interpretation and non-literal interpretation.

### 5.12 Examples from modern cases as to statutory requirements

Modern Acts often confer powers on law enforcement officers to interfere with liberty of the citizens, subject to certain formalities being observed. The question may arise whether non-compliance with statutory requirement nullifies the exercise of the statutory powers. In dealing with this question, the court examines the policy of the Act as against desirability of safeguarding liberty. The court strives to strike a balance and may reject technicalities.<sup>1</sup>

### 5.13 The process of interpretation

The assumption that a legal text should not need interpretation has never been true. Almost every law needs interpretation. The law of interpretation now forms the subject of nine-tenths of all appeals on points of law.<sup>2</sup>

1. Munnich v. Godstone RDC, (1966) 1 W.L.R. 427 (CA).
2. Johnson v. Morelon, (1980) A.C. 37, 53 (House of Lords).

