



## Fundamentals of Judicial Proceedings in Early India: A comparative Study of *Mṛcchakaṭika* and *Manusmṛti*

*Prem Kumar*  
*Assistant Professor of History*  
*Motilal Nehru College Eve*  
*University of Delhi*

### Abstract

Patrick Olivelle says that *Mṛcchakaṭika* is the early classical literature that provides the most explicit reference to *Manusmṛti*. *Manusmṛti* is a favorite book on ancient laws of Hindus among all *Dharmaśāstric* literature since its first English translation published by Sir William Jones in 1794. The ninth act of the play *Mṛcchakaṭika* entirely devotes to a murder trial. Here, a brahmana named Cārudatta is being tried for the murder of courtesan Vasantasenā. *Mṛcchakaṭika* is missing from the source material to reconstruct the history of ancient Indian judicial procedure. Here, I have twofold objectives. First, to examine the extent and dissemination of the laws of Manu in the judicial administration at the time of Śūdraka, and second to examine the question of code- practice relationship.

**Keywords:** *Mṛcchakaṭikam*, Śūdraka, *Dharmaśāstric* literature, *Manusmṛti*, *vyavahara*, Ujjayinī, *vyavharmandpam*, *adhikaranmandapam*, *adhikarnika Śreṣṭhin*, and *Kāyasṭha*.

This paper is aimed to explore some aspects of judicial proceedings as reflected and prescribed in *Mṛcchakaṭikam* (here after MK). The essay is not a history of the legal system or administration of early India, but it is about the judicial procedures as reflected in *MK*. *MK* is relatively less explored text not only from historical but also from a legal perspective as well. The historians missed the study of *MK* from broader aspects for a more substantial period. The internal evidence indicates that the author of the *MK* is much aware of *Manusmṛti* while dealing with the judicial proceedings<sup>1</sup>. Patrick Olivelle says that *MK* is the early classical literature that provides the most explicit reference to

<sup>1</sup> M. R. Kale, *The Mṛcchakaṭika of Śūdraka*, Motilal Banarsidass, Delhi, 2015.



*Manusmṛti*.<sup>2</sup> *Manusmṛti* is a favorite book on ancient laws of Hindus among all *Dharmaśāstric* literature since its first English translation published by Sir William Jones in 1794.<sup>3</sup> The act nine of *MK* is devoted to a murder trial. In this murder trial, the learned judge is aware of the laws of the land as prescribed in *Manusmṛti*. Despite being Brahmin, Cārudatta the accused was granted capital or corporal punishment by king Pālaka. The judgement is not only shown a significant departure from what is prescribed in *Manusmṛti* but also challenge the dominant Śāstric idea of justice based on the normative text like *Manusmṛti*. It is evident that the text like *Manusmṛti* was challenged within the literary tradition. In the broader context, it is a pertinent question to investigate that whether the judicial system was based on normative texts like *Manusmṛti* or not and how far early Indian states accepted the laws prescribed in these texts. One of the bright objectives of this essay is to examine the extent and dissemination of the laws of Manu in the judicial administration at the time of Śūdraka of *MK*.

Another objective of the paper is to examine the question of code- practice relationship. It is clear from the above reference that the laws of Manu were known to the author of *MK*. But how far it got practiced is a matter of investigation here. Davis argues that it is a mistake to write a history of law in India by *Dharmaśāstras* and he gives two reasons for it. First, *Dharmaśāstra* by itself cannot provide a direct witness to legal practices because it is composed within and for a scholastic tradition. Second, even if other historical sources are consulted, starting with *Dharmaśāstra* inevitable yields a view of the law in which practice is seen as either congruent or divergent from the text.<sup>4</sup> He further writes that *Dharmaśāstra* was not a code written to be consulted like a recipe book for proper ingredients and preparation of a legal system or a religio-legal system.<sup>5</sup> It might be true that *Dharmaśāstra* is not providing direct witnesses of legal practices, but on the other hand, it is evident that *MK* is giving direct reference to the practice of the legal codes of Manu. To what extent these legal codes were practiced, we have to explore more secular sources other than *Dharmaśāstra*.

<sup>2</sup> Patrick Olivelle. *The Laws of Manu*, OUP, 2005, p. 23.

<sup>3</sup> *Ibid.* p. 63.

<sup>4</sup> Donald R. Davis. *The Spirit of Hindu Law*. CUP. 2010. 157.

<sup>5</sup> *Ibid.*158.



The plot of MK is not determined by history, although reminiscences of any historical fact could have some part of it, argues Tadeusz Pobożniak.<sup>6</sup> Despite not being an established historical play, it has embedded history. Tentative historical consciousness is there in the depiction of society, economy and political plot in general. The play touches the audience with its realism. *MK* is not a court romance involving kings and princes, palaces and gardens. *MK* documents fundamentals of judicial proceedings in the ninth act of the play. It projects an idealized judicial system but departs at the end. It is an indispensable source of history in general and legal history with certain aspects of judicial proceedings not corresponding to *Manusmṛti*. The play depicts judicial proceedings at great length, which can be studied to explore new dimensions in the field of early legal studies. It is a model suit that could prove or disprove the working of old laws based on *Dharmaśāstric* literature. Today we have a great deal of information about the judicial system of ancient India, but this suit could give us a different perspective on pervading views on laws in ancient India. It could tell us a great deal about judicial proceedings, nature of early Indian state, human behaviors and social interactions.

### **The Text, the Author, and the Date: *MK* and *Manusmṛti*.**

*MK* is romantic play in ten acts. It is based on the love story of Cārudatta and Vasantasenā. The author of the play is more or less surrounded by mystery. Indian tradition attributes the drama to Śūdraka. *Prastavana* of the play gives some curious and scrappy details about the author. Whether Śūdraka personally wrote this drama or some other person at his court wrote it for him, cannot be determined exactly but it is safe to assume that Śūdraka was a king.<sup>7</sup> *Skanda-Purana* mentions a great king named Śūdraka who reigned in the year 3290 of the Kali era, i.e., in 190 A.D. Col. Wilfred was the first to identify this Śūdraka of *Skanda-Purana* with the founder of *Andhrabhṛtyas* dynasty whose name is given as Simuka. V. A. Smith gives the date of the founder of *Andhrabhṛtyas* dynasty as about 200B.C. that does not match with *Skanda-Purana*.<sup>8</sup> M. R. Kale says that it is highly probable that Śūdraka the founder of *Andhrabhṛtyas* dynasty who ruled about 200 B.C. was the author of *MK*. In ancient India, we have many kings who composed many works; Śūdraka might be a literary artist

<sup>6</sup> Tadeusz Pobożniak, *Mṛcchakaṭīka* as a Drama of Individual Characters, *Indologica Taurinensia*, Vol 6. (1978).

<sup>7</sup> M. R. Kale, *The Mṛcchakaṭīka of Śūdraka*, Motilal Banarasidas, Delhi, 2015. P.xviii-xix.

<sup>8</sup> Cited in M. R. Kale. 2015.



king like others. In the absence of any contradiction on his authorship, we may assume that the text is authored by Śūdraka.

The chronology of Sanskrit dramas is still an unsettled issue. Very few play writers mention dates to their texts, in most of the cases times of books are retrieved from either their contemporaries or from the mass of literary materials. But in all cases, specific inferences are not satisfactory. The same applies to *MK*. The exact date of the play is not known, different translators attribute different year to the play. P. Lal attributes Śūdraka birthplace to Andhra in south India and dates the historical events described in *MK* to 485 B.C. However, he fails to date the author.<sup>9</sup> In recent translation, M. R. Kale dates the text between 3<sup>rd</sup> and 5<sup>th</sup> C.E. one the other hand V. V. Mirashi places *Mk* in the first quarter of the second century AD.<sup>10</sup>

*Manusmṛti* is the earliest representation of *Dharmaśāstric* literature, which is widely celebrated and studied among all *śāstric* literature. Like any other classical works of Sanskrit, date, and authorship of Manu is unsettled. Olivelle tells us that what may be called the sutra period of the legal tradition ended around the beginning of Common Era. The age of *smṛti* ended probably in the second half of the first millennium CE.<sup>11</sup> First English translation of Manu was brought by Sir William Jones which continued for almost one century when in 1886 Buhler published his translation in the series of the sacred book of east edited by Max Muller. Buhler suggests a time bracket 200 B.C. to 200 A.D. for Manu. From some of the internal pieces of evidence and epigraphic examination of contents, R. S. Sharma revised the time bracket, between 200 A.D. to 400 A.D. for Manu. But in his recent translation, Patrick Olivelle puts the date between 3<sup>rd</sup> CE to 5<sup>th</sup> CE.<sup>12</sup> Traditionally it is thought that composition of *Manusmṛti* was gradual process at the hands of anonymous and successive compilers and editors lasting for several centuries. But against this hypothesis, Buhler proposed the unitary authorship for Manu in 1886 and objected the gradual textual evolution. From embedded structure inside the text, Olivelle also supports the theory of unitary authorship.<sup>13</sup>

<sup>9</sup> P. Lal. Great Sanskrit Plays in New English Translation, A New Directions Book, New York, 1964, p. 79

<sup>10</sup> V. V. Mirashi, The Date of Mṛcchakaṭika, Indologica Taurinensia, Vol. 8-9, 1980-81.

<sup>11</sup> Patrick Olivelle, *Dharmaśāstra*, Motilal Banarasidas, Delhi, 2000. P.3.

<sup>12</sup> Patrick Olivelle, Manu's Code of Law, OUP, 2005.p.6-7.

<sup>13</sup> Ibid. pp. 6-13.



---

## The Plot and the Trial

Every act of this drama is individualistic. Act ninth is entirely devoted to judicial proceedings. Where in the city of Ujjayinī in the court of justice, Saṁsthānaka or Sakara the royal brother of king Pālaka lodges a written complaint in the presence of presiding judge about the murder of a woman in the old garden of *Pushpakarandaka*. He identifies the woman as Vasantasenā, the famous courtesan of the city. The judge calls the mother of Vasantasenā for cross-examination of complaints. The mother of Vasantasenā says that Vasantasenā has gone to Cārudatta's house to enjoy the pleasures of youth. Then the complaint names Cārudatta as the main accused. The judge summons Cārudatta in the court of law. Cārudatta accepts that Vasantasenā is his friend. Then Śakāra blames him for the killing of Vasantasenā for the sake of her ornaments. Vasantasenā's mother not only defends Cārudatta but also informs the court about a past incident when on account of theft and loss of Vasantasenā's ornaments, Cārudatta gives his wife necklace in return for her. Then Vīraka, the officer in charge of the city guard, comes to court to complain Chandanaka. He informs the court about a carriage carrying Vasantasenā, belongs to Cārudatta. The judge sends Vīraka to the murder site to find some physical shreds of evidence. Vīraka finds a woman corpse being eaten by jackals. Now proofs are clear and well connected. Then enters Maitreya; a friend of Cārudatta, to the court of law with Vasantasenā's ornaments. Cārudatta also approves that the ornaments belong to Vasantasenā. Vasantasenā's mother confirms that the ornaments are not the same but of similar that belongs to Vasantasenā. Now the motif of the murder gets clear. The judge gives his decision and finds Cārudatta guilty of murdering Vasantasenā. Śakāra suggests capital punishment for Cārudatta but the judge quotes laws of Manu which forbids capital punishment for Brahmins, so he defers the judgment to the king. The matter goes to the king Pālaka, and he gives corporal punishment to Cārudatta. Here the trial ends.

## Cārudatta and the State

Cārudatta is the hero of the play and the main accused of the suit, a Brahmin merchant who is a citizen or *nāgaraka* of the city Ujjayinī. His ancestors had amassed a considerable fortune in trade, but wealth has disappeared and left Cārudatta penniless. He is poor now not only because of his luck but also because of his generosity and charity works. He had sent large amount on public charity.<sup>14</sup> He

---

<sup>14</sup> M. R. Kale, *The Mṛcchakaṭika of Śūdraka*, Motilal Banarasidas, Delhi, 2015. 88&340.



is also munificent. His sense of high honor forces him to replace the stolen ornaments by a costly necklace of his wife. When charged, his silence in the court of law could not be explained easily. He is ideal noble citizen of Ujjayinī who is known and loved by every citizen of the city and even by the judge of the court.<sup>15</sup> He is considered to be an ornament of the city.<sup>16</sup> He is so large-hearted and kind that he praises the skill of burglar who has broken his house and stole ornament from Vasantasenā. In spite of knowing that he could incur a case of treason, he helps Āryaka, who rebels rival of king Pālaka, to escape in safety.<sup>17</sup> He embodied all the desired virtues of a human of his time.

Śakāra or Samsthānaka is the villain of the play and main complaint of the above suit, a royal brother-in-law of the king Pālaka of Ujjayinī. King Pālaka is not part of the character of the play but exists in the background and gives final judgment to the suit. On the other hand, Śakāra is present everywhere in the play as a true representative of the state. He is not only pervert debauchee but also a cruel and remorseless villain. He is a fool but cunning in shifting the charges on Cārudatta and saving himself.<sup>18</sup> He is wise enough to use the royal power in threatening and abusing judges, assessors, Vasantasenā's mother and Cārudatta in the court of law. Here the state is described as absolute and cruel just like Śakāra.

### **Judicial proceedings as reflected in *MK***

Several texts divide legal procedure under various categories. Davis says that Hindu legal procedure consists of four stages of a trial- plaint, reply, evidence and decision. It is a processual division of *vyavahara* or court. This division includes extensive discussions of the qualification and examination of the witness, modes of evidence from the witness, documents and possess to oaths and ordeals.<sup>19</sup> But here, Śūdraka divides complains in two categories- one depending on arguments (oral or statements) and the other on facts. He says that the one which depends on arguments is to be settled by the plaintiff and the defendant by arguing against each other. And what depends on facts is to be

<sup>15</sup> Ibid. pp. 232& 324.

<sup>16</sup> Ibid. p. 48.

<sup>17</sup> Ibid. p. 250.

<sup>18</sup> Ibid. p. 342.

<sup>19</sup> Donald R. Davis, *The Spirit of Hindu Law*, CUP, 2010. p.110.

decided by the judge with the help of his wisdom<sup>20</sup>. Here Śūdraka gives the very simplistic division of complaints in the law which does not correspond to the laws of Manu. Instead, Manu prescribes eighteen kinds of litigation.<sup>21</sup>

Like Manu, *MK* also describes the organizations of the court. Manu says when the king is going to try a case; he should enter the court modestly accompanied by Brahmins and counselors who are expert in policy. When the king does not try a case personally, however, he should appoint a learned Brahmin to do so. Entering the central court itself accompanied by three assessors, he should try the lawsuit brought before the king, either seated or standing.<sup>22</sup> Manu uses the term *dharmastha* or *pradvika* for a judge. He prescribes that a judge should infer the truthfulness of litigants and witness by their external demeanor, find out special laws of the region, caste, and family of the litigants, never initiate a law *suo moto* and try to suppress an action brought before him, apply correct judicial reasoning and stick to the norms recognized by cultured elite but only if they are not in conflict with those of particular regions, castes and families<sup>23</sup>. Śūdraka frequently uses *vyavharmandpam* for the court, *adhikaranmandapam* for the court of justice or courtroom or justice chamber and *adhikarnik* for the judge.<sup>24</sup> By order of the officers of the law court, Sodhanaka, the beadle prepares the court after sweeping and arranging the seats.<sup>25</sup> Then comes Śakāra to the court to lodge a written complain about strangling and murdering of Vasantasenā.<sup>26</sup> Then enters a judge accompanied by a *Śreṣṭhin*, a *Kāyastha* and others. On contrary to Manu who recommends that a judge must be accompanied by three assessors, Śūdraka provides two assessors in the form of a *Śreṣṭhin* and a *Kāyastha*.<sup>27</sup> Śūdraka also prescribes some qualities for a judge. According to him, “a judge should be learned in law; expert in tracing frauds; eloquent; never losing the temper; equally impartial towards friends, strangers and relatives; giving the decisions only after investigating the facts; a protector of the weak; a terror to the rogues; righteous; free from greed even when the means exist for him; sincerely bent in the mind on

<sup>20</sup> M. R. Kale, *The Mṛcchakatika of Śūdraka*, Motilal Banarsidass, Delhi, 2015. 319

<sup>21</sup> Patrick Olivelle. *The Laws of Manu*, OUP. 2005.p.167.

<sup>22</sup> *Ibid.* p. 168.

<sup>23</sup> *Ibid.* p. 56.

<sup>24</sup> M. R. Kale, *The Mṛcchakatika of Sudraka*, Motilal Banarsidass, Delhi, 2015.p.306-7.

<sup>25</sup> *Ibid.*p.307.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.* p.311



the real truth and able to avert the anger of the king.<sup>28</sup> Judge himself says that ‘nothing but odium is commonly is to be got by a judge, appreciation but seldom.’<sup>29</sup> Blame is very easy for a judge to get and applause is far removed from him.<sup>30</sup> These words indicate towards the toughness of the job of a judge. They were consistently working the pressure of the ruling kings and were not supposed to anger or incur the blame the king by failure of justice.

When Cārudatta enters the court of justice he describes the supreme grandeur of court as ‘owing to its cruel elements, this royal court of justice looks like an ocean; it has water in the shape of ministers deeply engaged in thoughts; it is full of waves and conches in the form of envoys or advocates; it has within its environs sharks and alligators in the forms of the spies; it is the abode of ferocious animals in the forms of elephants and horses; it is thronged with kanka birds in the form of litigants shouting variously complains, it is resort of serpents in the form of kāyastha; and it has its shores cut in by politics.’<sup>31</sup> The organization of court mentioned by Śūdraka is much larger than that of Manu. It not only comprises of human elements but also animals. Elephants and horses are very much part of an organization. Interestingly he comes with a hierarchy in the legal structure- ministers, envoys, spies, elephants and horses, litigants, and Kāyastha. Kāyastha who is one of the leading assessors of the judge is placed at the bottom of the hierarchy. It could be because of their lower social origin.

Knowing that the first suitor is the brother-in-law of the king himself, the judge first refuses to hear the case, and when Śakāra threatens him of removal and appointment of a new judge in his place, he accepts the case.<sup>32</sup> Trial starts with the interrogation of Śakāra. Śakāra questions the fairness or righteousness of the legal procedure when judge offers a seat to Cārudatta. When Śakāra questions the partiality of the investigation; the judge abuses him by calling low caste fellow.<sup>33</sup> And when Vīraka comes and informs the judge about the carriage in which Vasantasenā was travelling belonged to Cārudatta he immediately sends Vīraka to the garden for investigation and collection of evidence from

<sup>28</sup> M. R. Kale, *The Mrichchhakatika of Sudraka*, Motilal Banarsidass, Delhi, 2015. 319

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid. p. 325.

<sup>32</sup> Ibid. p. 313.

<sup>33</sup> Ibid. pp. 327-331



there. Vīraka returns and confirms about the woman corpse being eaten by jackals. Despite knowing that all points of laws or proofs are apparent and well connected and pointing towards Cārudatta, the judge finds difficulty in preceding the case, but when he sees the ornaments belonging to Vasantasenā from the possession of Maitreya (a close associate of Cārudatta), he orders to arrest Cārudatta. Śākāra suggests capital punishment for Cārudatta but he defers the judgment to the king. Judge convicts Cārudatta guilty in the case and pronounces his decision-“he is a sinner.” But Manu has led down that a Brahmana is not to be killed; he might be banished from the country together with all his property intact." Against judge's recommendation; the king Palaka grants death sentence to Cārudatta.

When it comes to punishing someone, Manu says that ‘punishment can only be administered by someone who is honest and true to his words, who acts in conformity with the treaties, who has good assistants, who is wise within his realm, he should act in accordance with the rules; upon his enemies he should impose harsh punishment, towards his friends and lovers, he should behave without guile, and to Brahmin he should show compassion’. When we carefully examine the trial, we find that judge is not only acting according to the laws and reasoning but also showing compassion towards Cārudatta who is Brahmin by caste. Punishment takes two forms- *danda* and *prayaschita*. *Danda* refers to punishment meted out by legal authority’ usually by a ruler, for criminal and civil offenses. *Prayaschita* denotes self-imposed penance or expiations. Manu prescribes four forms of *dandas* - warnings, censures, fines and corporal punishment. In case of Brahmin offender, persons of good families or those who diligently perform religious rites, corporal punishment can be commuted to fines<sup>34</sup>

Laws regarding corporal punishment to a Brahmin are static in sutras and sastric pieces of literature. *Apastamba* and *Bodhayana* explicitly say that a Brahmin is not subject to capital punishment for any crime. However, laws differ from one text to another when it comes to murdering a Brahmin. *Vasishtha*, *Apastamba*, and *Bodhayana Dharmasutra* prescribe capital punishment for various sins but not for Brahmins. The Sutra literature provides multiple means and penances for murdering a Brahmin. *Vasishtha Dharmasutra* says that a person who offers a horse sacrifice overcomes all sins; he overcomes even the murder of a Brahmin. He further says that by studying treaties on law a man is

<sup>34</sup> Donald R.Davis, *The Spirit of Hindu Law*, CUP, 2010. pp. 231-332.



free from all sins even murder of a Brahmin. He prescribes a penance for murdering a Brahmin either by living on water for twelve days and observing a total fast for twelve more days or by controlling one's breath sixteen times every day while reciting the calls and syllable *Om*.<sup>35</sup> In this world there are only two persons who are exempted from accusation and punishment- the Brahmin and the king prescribes the laws of *Narada*.<sup>36</sup> Manu exempts Brahmins from capital punishment for every sort of crime; instead, he prescribes shaving of a head like a death penalty. He further prohibits king not only from killing a Brahmin but also from thinking of killing a Brahmin.<sup>37</sup> On the contrary, Manu also defines who is not a Brahmin. On the qualification of being a Brahmin, Manu says Brahmans who are not learned, who do not teach or who do not maintain the sacred fires become equal to sudra.<sup>38</sup> Manu also tells that no expiation is possible for the three sins- first, people who murder a Brahmin, second Drink liquor, and third have sex with the wife of an elder. Manu also says that king should treat Brahmins who are cattle herders, traders, artisans, performers, money lenders and servants just like shudra.<sup>39</sup>

Taking consideration of the qualification of a Brahmin as prescribed by Manu, the capital punishment given to Cārudatta by king Pālaka could be justified. When judge repeatedly asks Cārudatta to tell the truth, he is silent on many occasions. He does not say to the court about the escape of Āryaka and how he helped him safe flee by lending him carriage. By keeping himself silent, he hides his treason against the king or state by assisting rival rebel. He is also silent on the exchange of ornaments with Vasantasenā which proves the motif of the murder. On the other hand, mother of Vasantasenā informs the court about the background of Cārudatta. She says that Cārudatta is the well-known grandson of Vinaydatta and son of Sagaradatta and he dwells in merchant's quarters.<sup>40</sup> Cārudatta's ancestral profession as traders disqualifies him as a real Brahmin by the laws of Manu. Neither he is teaching nor maintaining sacred fires, so he is also excluded as a Brahmin. In

<sup>35</sup> Patrick Olivelle, *Dharmaśāstra*, Motilal Banarasidas, Delhi, 2000.p. 441-457.

<sup>36</sup> Cited in Donald R. Davis, *The Spirit of Hindu Law*, CUP, 2010. p. 45.

<sup>37</sup> Patrick Olivelle. *The Laws of Manu*, OUP. 2005. p. 187.

<sup>38</sup> Patrick Olivelle, *Dharmaśāstra*, Motilal Banarasidas, Delhi, 2000P.36.

<sup>39</sup> Ibid 172.

<sup>40</sup> M. R. Kale, *The Mṛcchakaṭika of Śūdraka*, Motilal Banarsidass, Delhi, 2015. p.321.



---

case of his disqualifications, he gets treated as Sudra and granted capital punishment for the murder of Vasantasenā.

### Summing Up.

From the external point of view, it seems that the death sentence given to Cārudatta could not be justified in the laws of Manu or other words justice is not following the rules of Manu. From the beginning till the conviction, every step of judicial proceedings corresponds to the laws of Manu except the final judgment by the king. But when we shift our vantage point from Cārudatta or caste identity to the state or king Pālaka, we could justify the decision which seems to be following the laws of Manu. Manu prescribes various qualifications for being a Brahmin, and here Cārudatta fails to satisfy those terms set by Manu. Henceforth, Cārudatta deserves capital punishment just like any other sudra and justify every step of judicial proceedings according to the laws of Manu.

The above discussion not only solves the puzzle of capital punishment to a Brahmin but also code- practice problem. In a limited sense, Mk could be the early classical text to provide a reference to the laws of Manu but in a broader sense; it could be the only text which demonstrates the practicing of the ancient laws in action. More studies of MK are required to establish it as an essential source of history.