



Gujarat National Law University



INVITATION

law tradition day

21 MARCH

To symbolize, manifest and celebrate legal traditions in *indian legal system*,

Gujarat National Law University is observing

21 March as *law tradition day*

Chief Guest & Key Note Address

Hon'ble Ms. Justice B. M. Trivedi
Judge, High Court of Gujarat

Time & Venue

Monday, March 21, 2016, 09:15 AM-10:15 AM, Orientation Hall, GNLU
Attalika Avenue, Knowledge Corridor, Koba, Gandhinagar - 382007

Dr. Thomas Mathew
Registrar

Prof. (Dr.) Bimal N. Patel
Director

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21 March also commemorates with the day in 1977 when Emergency was withdrawn after 21 months of dark hours. Modern Indian history witnessed post-emergency period as the period of judicial activism. It was during this period that the Court's jurisprudence blossomed with doctrinal creativity as well as procedural innovations. The Court by its doctrinal activism through procedural innovations not only established the concept of 'Rule of Law', but it infused legal traditions back in our system.



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Any tradition has three attributes, the history of its pastness, the continuing presence and the transmission into future. Every tradition of world is developed over a period of time through its customs and traditions. The existence of traditions uniquely distinguishes different traditions in the world. The tradition is a continuing element that recognizes certain ideas, doctrines, and institutions endure. These traditions with in the tradition restructure major portions of society and styles of governance.

As a state, with mixed traditions ranging from tradition inherited from common law, civil law and different personal laws, Indian traditions and institutions are incredibly layered with influences from multiple periods of long history. The influences combine historical and modern, religious and secular, customary and formal, communal and individual, national and international traditions interwoven within Indian complex society.

From ancient to medieval to modern era, Indian jurisprudence has imbibed different traditions from different cultures and civilizations. As one of the most ancient traditions, Indian traditions have exalted pedigree. Even in ancient history, Indian jurisprudence was found on the rule of law. The king was subject to the law. The arbitrary power was unknown to Indian political theory and jurisprudence and the king's right to govern was subject to the fulfillment of duties. The breach of duties resulted in forfeiture of kingship. The judges were independent and subject only to the law. The ancient Indian witnesses the highest standard as regards to ability, learning, integrity, impartiality, and independence of the judiciary, and these standards have not been surpassed till today. After the attainment of freedom the Indian judiciary has maintained the ancient Indian tradition of judicial independence and integrity. The *Manu Smriti* which represents the elaborate scholastic system of an expert tradition with one voice lays down that dispensation of justice is the highest duty of judges. This text says that it is a duty of judge to dispense justice and uphold justice. The principle of judicial independence

fundamental to the Indian tradition was fully understood and enforced in ancient India. Indian Judges have lived up to the injunction of *Manu Smriti* that a Judge should decide cases without any motive of personal gain or prejudice or bias and his decisions should be in accordance with the law prescribed by the text.

According to *Manu Smriti*, there was a hierarchy of courts in ancient India beginning with the family courts and ending with the king. A very strict code of judicial conduct was prescribed for the king. He was required to decide cases in open trial and in the court-room, and his dress and demeanour were to be such as not to overawe the litigants. He was required to take the oath of impartiality, and decide cases without bias or attachment. *Manu Smriti* says, "The king should enter the court-room modestly dressed, take his seat facing east, and with an attentive mind hear the suits of his litigants. He should act under the guidance of his Chief Justice (*Prasavachak*), judges, ministers and the *Mantri* members of his council. A king who dispenses justice in this manner and according to law resides in heaven" The fountain source of justice was the sovereign. Such traditions of dispensing justice from sovereign is still reflected in *Article 72* and *Article 166* of Indian Constitution wherein pardoning powers are possessed by the President and Governors of state respectively.

The judges and counselors guiding the king during the trial of a case were required to be independent and fearless and prevent him from committing any error or injustice. If the king wants to inflict upon the litigants (*Chakravartin*) an illegal or unrighteous decision, it is the duty of the judge (*Samantas*) to warn the king and prevent him. The judge guiding the king must give his opinion which he considers to be according to law, if the king does not listen, the judge at least has done his duty. When the judge realizes that the king has deviated from equity and justice, his duty is not to please the king for this is no occasion for soft speech (*Chakravartin tat prajam nashita*); if the judge fails in his duty, he is guilty. The epoch of judicial activism in post constitutional era is reassertion of Indian traditions.

The principles of social justice enshrined in **ભારતીય નીતિશાસ્ત્ર** stems from the religious history of India. Environmental Jurisprudence of this country has roots of preservation dating back to ancient period whereby perspectives of environmental justice being reflected in verses of **ઋગ્વેદ**. Principles of Interpretation were developed to high degree of perfection from ancient times when Judges were required to decide cases, criminal and civil, according to law (**દક્ષિણ, પૂર્વ-દેશના, દેશના વેદના ચર્ચાઓ**). This involved interpretation of the law-a task which created many problems such as the elucidation of obscure words and phrases of **શાસ્ત્ર**, reconciliation of conflicting provisions in the same law and solution of conflict between the letter of the law and principles of **દુષ્ટિ, ગુણવત્તા and છોટા ધર્મશાસ્ત્ર**, adjustment of custom and **શાસ્ત્ર**, and so on. This branch of law which in modern world, we call Interpretations of Statutes was highly developed and a number of principles were enunciated for the guidance of the courts.

The ideal of justice under Islam was one of the highest in the Middle ages. The **પ્રપંચ** in the **ગુરુ**, quoted, "Justice is the balance of God upon earth in which things when weighed are not by a particle less or more. And He appointed the balance that he should not transgress in respect to the balance; wherefore observe a just weight and diminish not the balance". It is reported that he said a moment spent in the dispensation of justice is better than the devotion of the man who keeps fast every day and says prayer every night for 60 years. Thus the dispensation of justice was regarded by the **ભારતીય શાસ્ત્ર** as a **ધર્મશાસ્ત્ર** વેળા during medieval history of India. The **ભારતીય ગુણવત્તા** **શાસ્ત્ર** has left its imprint on the present system, and a good part of our legal terminology is borrowed from it.

The great jurists, **ભાગ્ય, પૂર્વ-ચાર્ય, કાત્યયાન, ભગવાદપાત્ર** and others, and in later times commentators like **ચાત્યપાત્ર લેખક** and others, described in detail the judicial system and legal procedure which prevailed in India from ancient times. In essence, the inherent **ભારતીય શાસ્ત્ર** of ancient and medieval India still continues to be part of Modern India post constitutional era. The **ભારતીય શાસ્ત્ર** **ભારતીય શાસ્ત્ર** are unique and distinct

which makes Indian legal system evidently different from other legal systems of the world.

The interpretation of the **ભારતીય નીતિશાસ્ત્ર** and the integration of the rule of law with economic and social progress requires our **શાસ્ત્ર** to have profound knowledge of **ભારતીય શાસ્ત્ર** of India. The knowledge of **ભારતીય શાસ્ત્ર** will empower the social evolution and transform our legal journey to achieve the ultimate end i.e. **ગુણવત્તા and ગુણવત્તા શાસ્ત્ર**. The education of any Indian Legislature, Executive, Judge or Lawyer is incomplete, without underpinning the foundations of **ભારતીય શાસ્ત્ર** in India. In the era of globalization, the enlightenment on our **ભારતીય શાસ્ત્ર** will enhance our efficiency in governance, towards making our 'Unity in Diversity', a more sustainable reality for future.

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