LIKE every other Indian Village, Shivapur is also a bi-legal village. Whenever it suits them, individually and collectively, the villagers make use of the customary law or of the modern law established by the State. Being very close to the city of Dharwar, the headquarters of the district court and the judicial machinery, they are aware of the implications of modern law which is different from the one which they have been used to for generations. Many have resorted to the new law whenever litigations pertaining to land tenure and partition of family property have occurred. At present, there are two cases of partition and eight cases of land tenure, besides a criminal complaint in connection with a fight that touched off a year ago during the Holi festival, the festival of the sprinkling of coloured water. Recently, several disputes have been resolved by the traditional method of settling them on the basis of customary law.

In fact, the villagers are even more sensitive to the presence of the traditional law than to the existence of a court in the city, which is, in a way, foreign to them. They remember many instances in recent times of punishment being meted out by the caste council (Jāti Panchāyati) even after the offender had undergone the punishment given by the court of law. My Jain informant, Mr. Nābhānā, owner of the Chandrasheela tea-shop, once told me how his father-in-law had mortgaged his land to the Bank and then mortgaged it again to another person, and, being taken to court, was imprisoned for a month and fined 250 rupees. But on returning home the elders of the Jain Community met and decided that he should pay a penalty of 50 rupees to the community and undergo expiation (prāyaschitta) in the Jain temple, as his conduct had been a disgrace to it. The Jains imposed this punishment in order to restore the good name of their community. This resembles what Radcliffe-Brown\(^1\) calls the euphoria of society. The imposition was carried out by the offender without much resentment.

The inhabitants of the village think it proper to settle their disputes amicably in accordance with the customs and usage of the community. They consider

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it to be disgraceful to “climb the steps of the court” to resolve their litigations. A person appearing frequently in court as a witness is regarded by them as unreliable and of questionable character. An instance of an old respectable person was once told me by one of my informants in order to illustrate how seriously he took to heart the fact that he was summoned by the court to give evidence in a family dispute. Within two weeks of giving evidence in the court much against his will, he suddenly died. The cause of his death was attributed by the villagers to the shock he received.

Whereas settling disputes in court is considered unworthy, litigants willing to resolve their conflicts in the village itself by decision of the elders in accordance with custom and usage, are greatly appreciated. In their opinion, going to the court involves loss of money as well as prestige, so why not conserve both and be happy? In such a characteristic reaction by the villagers one can observe their anxiety to preserve and perpetuate the traditional legal institution.

Customary law as found in the village is an integral part of the normative system which is deeply rooted in the concept of “Dharma”, which cannot be explained easily. The wider concept of Dharma comprises rules of morality, conduct and good behaviour, religious principles, legal precepts and all that supports a harmonious functioning of human relationships. Customary law as practised in Shivapur must be viewed in the light of Dharma. Any attempt to explain fully the customary law cannot ignore its different dimensions and its interrelatedness with various other spheres of life. Law, religion, politics, commerce, administration, etc., are like different threads woven into a single fabric of society, and therefore have to be viewed in their entirety.

Jurists and anthropologists have in the past tried to reconstruct the growth of law on the basis of scanty evidence. Henry Maine, Henry Paul Vinogradoff and others have attempted to formulate a theory of the origin and development of law amongst all the peoples of the world. As expressed by Maine, law is derived from pre-existing rules of conduct which are at the same time legal, moral and religious in nature. The severance of law from morality and of religion from law belong only to the later stages of mental progress. According to him, the modern secular law has evolved from early religious law but has lost its religious basis.

In the rural Indian society customary law, religion and morality are not severed but are found closely related forming an organic whole.

Again, early anthropologists like Elliot Smith, S. Hartland, W. H. Rivers and Hobhouse, who were comparative historians and moral philosophers, viewed law merely in terms of procedure, crime and punishment. Influenced by the outlook of the modern lawyer and the formally organized judicial machinery, they have ventured to examine such a legal system in simpler societies in vain. Their study therefore resulted in misleading interpretations of law in simpler societies. Either man in these societies appeared to them as a savage devoid of law and order or as a kind and peace-loving man bound by

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