

International Law in Ancient India

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Western writers have propagated the legend that Indians had no rule of law and no legal system worth the name before the Britishers came to India. This is a legend without foundation. It was deliberately propagated to provide moral justification for the British conquest of India and the continuance of British rule against the wishes of the people. The truth is that ancient India had a legal system in advance of any other legal system of antiquity. In this article I intend to show that International Law or the Law of Nations originated in India and was developed to a high degree of perfection.

The People of ancient India had commercial and cultural intercourse with other nations and Indian sovereigns had diplomatic relations with other sovereign States. Indian merchants carried on trade on a large scale with nations as far apart as China, Rome, Egypt and South-East Asia. In course of time, Indian jurists developed a Code of Law governing relations between Indian sovereigns and foreign States and between Indian States *inter see*. This Code was already well established in the age of the Mahabharata, for it is described as "Ancient Law." Today this branch of law is called Public International Law, but many of its concepts have been borrowed from Indian Law.

The existence of a highly developed International Law in ancient India is proved by two facts—first, that the post of ambassador was reserved for persons of the highest ability, and secondly the ambassadors enjoyed diplomatic immunity subject to certain reservations. In the Ramayana the principle of the inviolability of the life of an ambassador is affirmed. In the interview between ambassador Hanumana and King Ravana in the Lanka Kanda of the Ramayana, Hanumana delivered a message from King Rama to the King of Lankas

"O King of the Rakshasa race I have brought a message from King Sugriva for you. The ruler of the Vanara tribe is your" brother King. He sends you his greetings."² Note the language, which was obviously the language of the protocol of those days.

On hearing the speech of the ambassador, King Ravana flew into a rage and ordered that he be executed. Bibhishana intervened and reminded the King that an ambassador could not be put to death:

"Show forgiveness, O King; and shed all anger; regain your normal mood and be pleased to listen to me. A King who knows the law will never order the killing of an ambassador."³

King Ravana objected, "This fellow himself has violated the Code. He has killed my soldiers and grossly abused his status." Bibhishana replied:

"O King of the Rakshasa race, after determining what is proper and what is improper, inflict on him some punishment which is proper in the case of an ambassador." The King was still not convinced and said:

"It is not illegal to kill an ambassador who himself has violated the Code. This man has killed so many Rakshasa soldiers and is guilty of murder. I shall put him to death as a punishment for his crimes." But Bibhishana persisted that whatever his faults, an ambassador's person was inviolate and he could not be killed.

"O King of the Rakshasa race," continued Bibhishana, "be pleased in what is the essence of the law on this point. The sages have declared that an ambassador's person is inviolate at all times and in all circumstances and an ambassador can never be put to death,"⁴ and Bibhishana then discussed the violation of the Code by ambassador Hanumana, and said, "There is no doubt that this ambassador is guilty of crimes without parallel. Nevertheless, the sages have laid down that the execution of an ambassador is not permitted because there are other diverse forms of punishment prescribed for an

1 This article is based on a series of articles on the legal system of ancient India by Justice S. S. Dhavan. The author places on record his debt to the learned Judge who gave him valuable suggestions for selecting the subject of the article.

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ambassador."⁵

"Amputation of a limb, flogging, shaving of the head, branding-these are the punishments prescribed-(note the word 'prescribed'). There is no authority for the killing of an ambassador."⁶

Bibhishana then explained the principle on which the inviolability of the ambassador was founded. "Whether an ambassador is a good person or an evil person is irrelevant, for he is only an agent sent by another and speaks in the interest of another. An ambassador, therefore, is never liable to the death penalty."⁷

Bibhishana further explained that all the punishment for the acts and words of an ambassador must be reserved for his principal. Both the law enjoining that an ambassador's life is inviolate and the principle on which it is founded are summed up in this and the following verse. "I see no merit in slaying this man. It is his principals who have sent him who deserve the death penalty."⁸

Now the King was convinced and said: "There is force in your argument. I concede that an ambassador's murder has been condemned by law. But he must be given some other punishment."⁹ Scores of centuries have passed-it is difficult to assess how many-since the Rama yana was composed by Valmiki. The episode of Rama's victory over the King of Ceylon became a part of Indian history and Indian tradition. The scene now shifts to Hastinapur where the Kings of the Kuru race ruled. War between the Kauravas and the Pandavas was imminent. But Krishna agreed to make one last effort to preserve peace to prevent the cold war which had been simmering for thirteen years from holding over as hot war. He went as ambassador of King Yudhishtira to the Court of King Dhritarashtra at Hastinapur-an ambassador of goodwill. He said:

"I shall go to the Court of Kaurava King in the interests of both the parties."¹⁰

When Krishna arrived at the Hastinapur Court, Duryodhana invited him to stay with him and accept his hospitality. Krishna declined the invitation, because the code of conduct of an envoy who was on a special mission to the enemy's Court prohibited acceptance of the enemy's hospitality unless and until his mission was successful. He observed:

"An envoy on a mission can accept hospitality and favours (from the enemy) only if he succeeds in his mission (Kritartha hi) Therefore, Bharata, you must wait for the success of my mission after which you may shower hospitality on me and my ministers".¹¹

Later, Duryodhana, in conspiracy with Shakuni and Karna, proposed before the Kuru Sabha that Krishna should be arrested and confined so that the Pandavas might lose their strongest supporter."¹² His proposal shocked every member of the Kuru Sabha; and the first to denounce it was his own father, the King, who said: "Duryodhana, as the ruler of the peoply you should not even utter such words. What you propose is against the ancient Law."¹³ "Hrishi-Kesha is coming to us as an ambassador. He has done us no wrong. How do you get the right to arrest him?"¹⁴

The oldest member of the Sabha, Bhishma Pitamaha, was so shocked that after denouncing Duryodhana's proposal he walked out of the Sabha. He said, "This man has discarded all laws and is bent upon committing what is a crime and a sin. I am not prepared to listen to his words." Having said this, the venerable old warrior Bhishma got up and left the assembly hall. In the Shanti Parva Bhishma re-affirmed this principle of inviolability of the person of the envoy in even stronger language and said that a sovereign who kills any envoy goes to hell.¹⁵

Thus, the inviolability of the person of an ambassador was a fundamental principle of the law or rules governing relations between States. It had become so sacrosanct that any proposal for violating it

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was condemned outright as shocking. The implications of these facts are important. A rule does not acquire sanctity in a day. It has an origin; it develops into a practice; it then becomes a custom; and finally it acquires the status of an "ancient law". Throughout this period, the practice must follow without interruption. It was already a law in the time of the Ramayana and had been elevated to the status of an ancient Code of conduct. All this development could take place only under the pressure of continuous relations between States, not all of whom were monarchies.

Coming now to the historic times, Kautilya devotes a whole Chapter to the duties of an ambassador. Chapter XVI bears the title Doota Pranidhi. One of the duties of an ambassador was to state the object of the mission as exactly as entrusted to him even at the cost of his life. Kautilya considers the possibility of the enemy under a fit of rage, being tempted to kill the envoy. Kautilya recommends that if such a situation arises, the enemy should be reminded of the immunity enjoyed by an ambassador under the Code which is enunciated by Kautilya himself in these words:

"Kings can speak only through their ambassadors. (Doota Mukha vai rajanah). An ambassador must, even in the face of weapons raised against him, express his mission exactly in accordance with his instructions. Therefore, an ambassador cannot be put to death, even if he belongs to the lowest caste. An ambassador's speech is really the speech of another. This is the law governing the status of ambassadors."¹⁶

There was an elaborate Code governing the conduct of war. The rules are laid down in great detail in Manu as well as the Ramayana and the Mahabharata.

All this indicates that the principles of international law were well established in ancient India.