

Justice in Dharma: Vyavahāra, Due Process, and the Ethics of Adjudication in Ancient Hindu Jurisprudence

Gobinda Chandra Mandal*

Abstract : *This article reconstructs vyavahāra as a procedural jurisprudence that gives institutional life to Dharma by organising adjudication around reasoned decision, structured proof, and calibrated remedy. Drawing on the Smṛti and Dharmasūtra corpora and the Arthaśāstra, it maps a four-source architecture of legality: Dharma, vyavahāra, cāritra (custom), and rājaśāsana (royal ordinance). The analysis shows how this ordering disciplines discretion while orienting judgment towards ethical ends. It interprets the vyavahāra-mātrikā of eighteen titles as an early taxonomy of causes of action and remedial fit; reconstructs the lifecycle of a suit from plaint to decree; and reads evidentiary canons through pramāṇa theory with attention to burdens, credibility, and probative hierarchies. The article argues that the tradition contains recognisable safeguards of due process, including impartial composition, audi alteram partem, reasons-giving, and transparent record-keeping, yet it also embeds status hierarchies of caste and gender that are normatively non-portable. A comparative conversation with modern Indian procedure and evidence clarifies what can travel: the craft ethos of issue-framing, reliability-first proof, proportional sanction, supervised settlement, and accessible records. The conclusion proposes a design ledger for contemporary institutions that carries forward these transferable principles, rejects status-based exclusions, and redesigns communitarian mechanisms under rights-compliant oversight. The result is a historically grounded account of process that speaks to present debates on fairness and institutional legitimacy.*

Keywords: *Vyavahāra; Dharma; Cāritra; Pramāṇa; Due process; Procedural justice.*

1. Introduction

Justice in Dharma is not an oxymoron of moral aspiration and legal technique, but a working synthesis. In classical Sanskritic jurisprudence, the domain of vyavahāra is the site where that synthesis is operationalised. It translates the capacious ideal of Dharma into adjudicative routines, rules of proof, institutional roles, and reasons for decision. What emerges, across the Smṛti corpus, the Dharmasūtras, the Arthaśāstra tradition, and the great medieval commentaries, is a procedural jurisprudence: a culture of decision that seeks truth and right order through structured hearing, graded evidentiary canons, and accountable judgment, even as it embeds and sometimes sharpens status hierarchies of class, caste, and gender. The present article treats vyavahāra as the point at which ethical direction, epistemic discipline, and statecraft meet. It aims to reconstruct the procedural architecture and its governing reasons, to show both the due process safeguards it can be read to contain and the limits set by the social ontology within which it worked.

* Associate Professor, Department of Law, University of Dhaka.

The core claim may be stated simply. Vyavahāra is not an afterthought within Dharmasāstra; it is one of the chief mechanisms through which Dharma acquires institutional life. This is visible, first, in the taxonomic ambition with which disputes are mapped. The classical enumeration of eighteen titles of law (vyavahāra-mātrikā) orders a wide field of wrongs and claims, signalling early conceptions of subject-matter jurisdiction, cause-of-action pleading, and remedial fit.¹ The list is not identical across the traditions, but its stability is striking enough to anchor a comparative analysis of procedural purposes. Secondly, the law of proof is not left to ad hoc wisdom. It is articulated with unusual clarity: documentary evidence, competent and incompetent witnesses, oaths and their moral psychology, and ordeals as devices of last resort.² In these materials, one finds the raw lineaments of an exclusionary instinct, a hierarchy of probative value, and a felt need to allocate the risk of error through burdens of assertion and proof.

The institutional scene is equally revealing. Courts are not imagined as atomised fora; collegial judging is prized, scribes and counsellors are assigned specific functions, and the royal duty to hear and to rectify is stated with regularity. In the statecraft tradition of the Arthasāstra, law and its administration form a coherent book-length programme, from the constitution of courts to the calibration of sanctions.³ This is not merely administration by fiat. It is a juridical craft grounded in notions of fairness (nyāya) that can, at times, temper even the textual command when the written word would undermine reason in application.⁴ The craft presupposes ethical direction, for adjudication is an exercise in practical reason, not a mechanical syllogism. Thus, the demands of śānti and social order sit alongside the obligation to give reasons, to hear the other side, and to cultivate impartiality.

The article proceeds on a defined corpus and a clear set of terms. Vyavahāra denotes adjudication and the legal process; nyāya marks right reason in judgment; pramāṇa refers to recognised means of proof within adjudication; and vyavahāra-mātrikā names the canonical titles. The primary sources comprise the major Smṛti texts and their commentaries, the Dharmasūtras, and the Arthasāstra, read in reliable modern translations

¹ Patrick Olivelle (tr), *Mānava-Dharmaśāstra (The Law Code of Manu)* (OUP 2004) paras 8.4–8.7, 167–70.

² Julius Jolly (tr), *The Minor Law-Books: Nārada and Bṛhaspati* (Sacred Books of the East vol 33, Clarendon Press 1889) 58–65 (‘Modes of Proof’), 75–83 (‘Documents’; ‘Witnesses’), 91–97 (‘Exhorting the Witnesses’; ‘Valid and Invalid Evidence’), 100–112 (‘Proof by Ordeal’; ‘Ordeal by Balance’).

³ Kauṭilya (ed), *The Kauṭilya Arthasāstra Part III: A Study* (RP Kangle tr, University of Bombay 1965) 217–223.

⁴ *ibid* 223, paras 8.1.43–8.1.45.

and editions, with occasional recourse to the digest tradition where it illuminates procedural technique.⁵ Transliteration follows standard academic usage; Sanskrit terms of art are retained where English is likely to mislead.

Methodologically, the analysis is a doctrinal reconstruction with philosophical attention. The texts are read for their procedural architecture and ethical rationales, then evaluated through four lenses familiar to contemporary jurists: natural justice, evidentiary reliability, proportionality in sanction, and restorative design. The interpretive wager is that these lenses are not anachronistic impositions. Rather, they bring into view concerns the texts themselves recognised: the impartiality of decision-makers, the hearing owed to both sides, the need to demand reasons rather than ritual formulae, the calibration of remedy to wrong, and the possibility of settlement or penance in place of purely retributive closure. The analysis also proceeds with a declared caution about the text–practice gap. Sacred and scholastic law books rarely functioned as direct sources of positive law in medieval or early modern India; their influence operated through juristic education, categories, and argumentative styles that shaped decision-making in local fora.⁶ The ambition, therefore, is not to claim a unitary historical practice, but to reconstruct an intellectual and normative design from the sources that framed practice.

The significance of such a reconstruction is threefold. First, it offers a more precise account of classical Indian proceduralism than is usually available in comparative law, which too often reduces Dharmaśāstra to a set of status rules and penances. Second, it challenges an easy dichotomy between ethical teleology and procedural neutrality. The materials depict a process suffused with ethical aims and yet recognisably concerned with accuracy, fairness, and restraint. Third, it furnishes a platform for a genuinely dialogic comparative conversation with contemporary public law and evidence doctrine, not to transplant rules across time, but to test design principles: reasons-giving as a culture, calibrated probative hierarchies, transparent records, and supervised restorative options that secure genuine consent.

The scope of the article is limited to procedural architecture, proof, institutional design, and sanctions within the classical materials and their major commentaries, with selective reference to modern doctrines where comparison illuminates rather than distorts. It does not offer pan-Indian social history, nor does it posit uniform practice across region or century.

⁵ Patrick Olivelle (tr), *The Dharmasūtras: Āpastamba, Gautama, Baudhāyana, Vasiṣṭha* (OUP 1999) passim; Richard W Lariviere (ed and tr), *The Nāradaśmṛti, vol 2: Translation* (University of Pennsylvania 1989) paras I.1–I.44.

⁶ Donald R Davis Jr, ‘Law and “Law Books” in the Hindu Tradition’ (2008) 9(3) *German Law Journal* 309, 312–313, 320.

Chronology and genre matter; so, do the incompleteness of the record and the editorial labours that lie behind the texts we read. Where the sources are thin, speculation is avoided; where the rules assume status hierarchies unacceptable to modern constitutional orders, those rules are described, not defended, and treated as instructive constraints on portability.

The structure of the article follows the argument. Section 2 clarifies the relationship between Dharma, vyavahāra, cāritra, and rājaśāsana, and shows how moral direction shapes adjudication without collapsing into consequentialism. Section 3 maps the vyavahāra-mātrikā across the principal texts and explains how the taxonomy implies jurisdictional and remedial ideas. Section 4 reconstructs institutions, procedure, and proof, including judicial ethics and the lifecycle of a suit. Section 5 analyses hierarchy's imprint on justice, with particular attention to graded penalties and testimonial asymmetries. Section 6 offers a philosophical synthesis of nyāya, due process, and the ends of adjudication. Section 7 places selected design principles in conversation with modern law. Section 8 distils a practical design ledger for contemporary institutions. Section 9 concludes by restating the thesis: a procedural jurisprudence with ethical nerve.

2. Dharma and the Architecture of Justice

Classical Hindu jurisprudence organises the normative universe around a four-part architecture: dharma as the overarching moral–religious order; vyavahāra as adjudicative procedure and positive rule; cāritra/ācāra as binding social practice; and rājaśāsana as royal ordinance. Textual syntheses present these as an ordered hierarchy for deciding hard cases: where a royal edict speaks, it governs; failing that, judges look to the parties' shared custom; absent custom, they apply the relevant titles of law and procedural norms; and, residually, they reason with dharma in a generic moral sense.⁷ This schema already signals a jurisprudence that integrates legality with ethics without collapsing the former into mere instrumentality.

Within that framework, vyavahāra gives justice institutional form. It names not only 'litigation' but also a set of rules about how the king's court receives a plaint, hears an answer, fixes issues, weighs evidence, and renders a reasoned decision. In doctrinal reconstructions of the tradition, legal procedure thus appears as the principal mediator between scriptural norm and lived consequence—an arena in which judges must translate moral direction into determinate outcomes under conditions of public scrutiny and record.⁸ The design is intentionally stabilising: forms of

⁷ Mark McClish, 'Titles of Law: vyavahārapada' in Patrick Olivelle and Donald R Davis Jr (eds), *Hindu Law: A New History of Dharmasāstra* (OUP 2017) 324.

⁸ Patrick Olivelle, 'Legal Procedure: vyavahāra' in Patrick Olivelle and Donald R Davis Jr (eds), *Hindu Law* (n 7) 283–285.

action, pleading conventions, and evidentiary hierarchies cabin discretion and thereby protect parties from arbitrary power.

Cāritra (ācāra) operates alongside procedure as the juridical face of social practice. Far from a loose appeal to “custom”, ācāra in the Dharmaśāstra denotes the normative conduct of recognised authorities that crystallises into precedent-like standards for future action. As such, it anchors adjudication in socially intelligible expectations while acknowledging regional variation and the authority of expert communities.⁹ By requiring courts to consult cāritra where applicable, the architecture gives pluralism a disciplined place in the production of legal reasons.

Rājaśāsana supplies a final, positive axis. Royal decrees can specify procedures, allocate jurisdiction, or calibrate remedies. Yet, in the classical expositions, even the king’s ordinance is not unbounded will: it is situated within the larger grammar of dharma and assessed through procedural reason. The jurisprudential point is not simply the primacy of command but the responsibility to legislate through procedure, so that public rules can be applied predictably and reviewed against shared standards.¹⁰

On this view, dharma does real work in court, but indirectly. It shapes ends—truth, fairness, proportion, and social repair—while vyavahāra supplies means. The law of proof is exemplary. Classical discussions of pramāṇa in adjudication rank and test modes of proof (document, witness, possession, oath/ordeal), articulate burdens, and exclude tainted testimony—all in service of reliable fact-finding.¹¹ Procedure thereby disciplines ethical aspiration: it insists that justice be demonstrated through reasons and evidence, not merely proclaimed in the name of higher norms.

The same is true of punishment (daṇḍa) and remedy. The king’s coercive power is justified as a tool for maintaining social equilibrium, but its exercise is limited by rules about proportionality, gradation by culpability, and the priority of restitution and fines over sheer retribution. The result is a repertoire that combines forward-looking correction with backward-looking desert, within procedural channels that can be checked and, where necessary, revised.¹² In short, adjudication is neither moralism nor technocracy. It is a practice of reason-giving under constraint, responsive

⁹ Donald R Davis Jr, ‘Dharma in Practice: Ācāra and Authority in Medieval Dharmaśāstra’ (2004) 32(5) *Journal of Indian Philosophy* 813, 814–815.

¹⁰ McClish, ‘Titles of Law’ (n 7) 324.

¹¹ Ludo Rocher, ‘The Theory of Proof in Ancient Hindu Law’ in Ludo Rocher, *Studies in Hindu Law and Dharmaśāstra* (Donald R Davis Jr ed, Anthem Press 2012) 361–370.

¹² Mark McClish, ‘Punishment: daṇḍa’ in Patrick Olivelle and Donald R Davis Jr (eds), *Hindu Law* (n 7) 273–281.

to ethical direction yet committed to forms that ensure parity of participation and intelligible outcomes.

This architecture also clarifies the much-discussed “text–practice” problem. Because the system embeds *cāritra* and welcomes specification by *rājaśāsana*, it anticipates local administration and pragmatic adaptation without surrendering procedural integrity. The judge’s task is to navigate these sources in a principled sequence: ask first whether an edict governs; if not, ascertain the parties’ applicable custom; if none, apply the positive titles and procedural rules; and, only then, reason openly with *dharma* to resolve residual indeterminacy. The aspiration, put simply, is ethical legality: law that has moral nerve precisely because it proceeds through fair process.¹³

3. Titles of Law and Legal Taxonomy: The *Vyavahāra-Mātrikā*

Classical jurists fashioned a strikingly serviceable taxonomy of disputes, the *vyavahāra-mātrikā*, which arranged litigation under eighteen heads. In Manu, the sequence moves from prototypical obligations to household and public order: non-payment of debt, deposits, sale by a non-owner, partnership, gifts, wages, breach of agreement, rescission of sale or purchase, herdsmen’s liability, boundary disputes, verbal abuse, assault, theft, violence, sexual offences against women, husband-and-wife matters, partition and inheritance, and, finally, gambling and betting. Read as a map of social risk, the list moves from transactional failures through relational breakdown to wrongs against the person and community.¹⁴

Although the number eighteen became canonical, the ordering and emphases were not rigid. Later compilers re-weighted the scheme, sometimes compressing or dividing heads, sometimes inserting emphatic procedural cues beneath the same rubric. Yājñavalkya adopts Manu’s titles but develops them more systematically, especially in areas such as suretyship and the treatment of derivative liability; Nārada’s juristic sensibility, in turn, presses further towards a litigation-centred arrangement. The effect is a tradition that holds fast to a shared “table of titles” while permitting doctrinal innovation within it.¹⁵

Two structural features deserve emphasis. First, the taxonomy performs the work of subject-matter jurisdiction. To bring a suit, one must cast a

¹³ McClish (n 7) 324.

¹⁴ Patrick Olivelle (tr), *Manu’s Code of Law: A Critical Edition and Translation of the Mānava-Dharmaśāstra* (OUP 2005) paras 8.4–8.7; cf G Bühler (tr), *The Laws of Manu* (Sacred Books of the East vol 25, Clarendon Press 1886) paras 8.4–8.7.

¹⁵ Robert Lingat, *The Classical Law of India* (J Duncan M Derrett tr, University of California Press 1973) 113, 119, 259.

grievance as a recognised head of claim, which both disciplines pleading and channels proof. That discipline is visible not only in the enumeration itself but also in the way commentarial and digest literature glosses each title with elements, defences, and evidentiary burdens.¹⁶ Second, the scheme encodes a civil–criminal gradient rather than a bright line. The early titles are recognisably private law in character, while the latter cluster, from insult and assault to theft and sexual violence, anticipate penal sanction as well as private redress, with *danda* and restitution calibrated to the gravity of the wrong.¹⁷

The Arthāśāstra makes this gradient explicit in institutional design. Book 3 gathers the law of transactions and household relations, concerned with agreements, marriage, inheritance, and boundaries; Book 4, styled as the “removal of thorns,” turns to offences that menace social order. The typology thus organises both the forum and the sanction: adjudication of bargains and status in one place, suppression of predation in another, with rules of procedure and proof threaded through both.¹⁸

Within this scaffold, the *vyavahāra-padas* also imply a primitive law of remedies. Debt and deposit gesture towards payment and return; *āsvāmi-vikraya* and rescission anticipate unwinding and restitution; boundary and herdsmen’s disputes require fact-sensitive allocation of loss; the family titles anchor partitions, special shares, and maintenance; insult and assault span damages, fines, and ritual expiation. What looks like a bare list, read with the commentaries, functions as a matrix linking wrong to remedy, and proof to consequence.¹⁹

The procedural pay-off is equally significant. Because the plaintiff must plead into a title, issues are framed with an eye to the elements of that head, and admissible proof follows suit. This is one reason why *vyavahāra* literature invests so heavily in testimony, documents, and oaths, and why later jurists worry about competence, credibility, and hierarchy in the witness box.²⁰

A brief comparative note helps to locate this achievement. Modern civil practice requires a “cause of action” pleaded with material facts; evidence law assigns burdens by the substantive rule at stake. The classical Indian

¹⁶ Donald R Davis Jr, *The Spirit of Hindu Law* (CUP 2010) 110; Lingat (n 15) 259.

¹⁷ *ibid* 113, 119, 259.

¹⁸ RP Kangle (tr), *The Kauṭīliya Arthaśāstra, Part II: An English Translation with Critical and Explanatory Notes* (2nd edn, University of Bombay 1972) book 3 chs 1–9; book 4 chs 1–13; See also Patrick Olivelle (tr), *King, Governance, and Law in Ancient India: Kauṭīliya’s Arthaśāstra* (OUP 2013) book 3 overview.

¹⁹ Patrick Olivelle (tr), *The Dharmasūtras* (n 5) 252–261; Lingat (n 15) 259.

²⁰ Donald R. Davis, ‘Hinduism as a Legal Tradition’ (2007) 75(2) *Journal of the American Academy of Religion* 241.

taxonomy anticipated both moves. By obliging litigants to select the correct head of claim, it imposed the discipline we would now associate with subject-matter heads in codes and with the logic of the cause of action; by tying proof to title, it prefigured a rule-structured allocation of burdens. The analogy should not be pressed into identity, for the status-laden substratum of *Dharma* does not travel. Yet, as a design device for clarity, reasons, and remedial fit, the *vyavahāra-mātrikā* deserves to be read as a procedural architecture rather than a mere scholastic list.²¹

4. Institutions and Procedure: Courts, Suits, and Proof

The classical materials construct adjudication as an institutional craft. They imagine a constituted forum that disciplines power through form, not a charismatic space in which the will of a ruler is law. The court is collegial, advised by learned assessors and served by scribes; it sits to receive a plaint, hear an answer, fix issues, weigh proof, and issue a decree that is preserved in record. This institutional picture is clearest where procedure is treated as an office through which even the king must govern. The *Arthaśāstra*'s Book III makes that commitment explicit, locating the administration of law in a bench that knows the forms of agreement, the modes of proof, and the techniques of enforcement.²² The *Vyavahāra-kāṇḍa* of the *Yājñavalkya-Smṛti* likewise frames adjudication as a sequence of juridical acts, not a moral homily dressed in legal language, and it repeatedly insists that adjudication is public, reasoned, and supervised.²³ The institutional lesson is straightforward. Authority is mediated by office and by the grammar of process.

Judicial ethics follow from the same design. Impartiality is a role duty rather than an aspiration, and corruption or partiality is treated as a public wrong that disrupts legal order. The *Mānava-Dharmaśāstra* condemns unjust judging in penal terms and attaches fiscal sanctions to miscarriages of adjudication, not merely to bribery but to ignorance and negligence.²⁴ A jurisprudence that punishes the judge for an unjust decision takes reasons seriously. If a decree must be defensible, it must be explained. Modern civil procedure converts this ethical expectation into a set of justiciable duties by requiring issue-wise determinations and reasons that are intelligible to parties and reviewing courts. Order XX of the Code of Civil Procedure

²¹ Code of Civil Procedure, 1908 (CPC 1908), Ord VII r 1 (India); Indian Evidence Act, 1872 (IEA 1872), s 101 (India); Davis Jr, *The Spirit of Hindu Law* (n 16) 110.

²² Kautīlya (ed), *The Kautīliya Arthaśāstra Part II: Translation* (RP Kangle tr, University of Bombay 1963) book III chs 1–5.

²³ Ganganatha Jha (tr), *Yājñavalkya-Smṛti* (book II (Vyavahāra-kāṇḍa), 3 vols, 1918–1930).

²⁴ Olivelle (tr) (n 1) para 9.234.

demands exactly that discipline: a judgment must be pronounced, signed, and supported by articulated reasons on the issues framed.²⁵ The convergence is telling. Where the Smṛti writers exhort, positive law compels.

The lifecycle of a suit reflects the same logic of discipline. A bare allegation must ripen into a justiciable plaint; an answer must meet the case pleaded; disputes are crystallised into issues before proof is taken. Classical sources, though using a different idiom, order litigation along this axis because it protects parity and renders adjudication intelligible. The *Dharmasūtras* already present recognisable building blocks. Witnesses are to be questioned in a formal setting, parties are to be heard in turn, and the court is to stabilise the dispute before it seeks to resolve it.²⁶ The point is not formalism for its own sake. It is to insist that the reasons given at the end can be traced to pleaded claims and proven facts, not to afterthoughts or conjecture. Contemporary codes again express the same thought in statutory form. The Code of Civil Procedure demands a structured judgment and the prompt preparation of decrees and certified copies so that orders can be enforced or challenged on a stable record.²⁷ Record-keeping is not a clerical ornament. It is the memory by which a legal order knows what it has done and why.

The law of proof supplies the epistemic spine. The Smṛti and *Arthaśāstra* materials are not naïve about knowledge. They distinguish modes of proof and rank them by reliability and context. Documents, witnesses, possession, and oath or ordeal are treated as different *pramāṇas*, with clear attempts to articulate their competence, credibility, and weight. The *Mānava-Dharmaśāstra* assigns burdens in terms that are still recognisable, asking judges to allocate the onus after the answer and to oblige the asserting party to substantiate the declaration by appropriate proof.²⁸ The *Yājñavalkya-Smṛti* prescribes a minimum number of witnesses and ties competence to qualities that, even allowing for status biases that modern law must reject, amount to a concern with perception, memory, and honesty.²⁹ The *Bṛhaspati-Smṛti* famously sets out the ordeals, yet it also situates them as residual devices hedged by cautions, which later jurists subordinate to more rational indicia when better proof is available.³⁰ The analytic structure is familiar. Burdens are allocated to those who assert;

²⁵ CPC 1908 (n 21) Ord XX, rr 4–5.

²⁶ Olivelle (tr) (n 5) *Āpastamba* para 2.29.7; *Gautama* para 13.1.

²⁷ CPC 1908 (n 21) Ord XX, rr 6–6B.

²⁸ Olivelle (tr) (n 1) para 8.60.

²⁹ Jha (tr) (n 23) para 2.69.

³⁰ Julius Jolly (tr), *The Minor Law-Books: Bṛhaspati-Smṛti* (Sacred Books of the East vols 33–34, Clarendon Press 1889–1890) chs 19–26 ('Proof by Ordeal').

presumptions arise from stable facts such as long possession; documents call for authentication; testimony is weighed, not counted; and extraordinary recourse to oath or ordeal is a last resort in conditions of evidentiary deadlock. Read against the Indian Evidence Act, the family resemblance is obvious. The Act's definitional core and its allocation of burdens in sections 101 to 104 state in statutory language what the classical writers pursued by doctrine and example.³¹ The continuity is not historical dependence but a shared epistemic ambition. Decisions must follow proof, and proof is a disciplined practice.

If adjudication is to do more than declare rights, it must also fit remedies to wrongs. Here too the classical repertoire is analytic rather than merely hortatory. Penalty, restitution, compensation, and penance are combined to produce proportional outcomes that reflect harm, culpability, and the prospect of social repair. The *Mānava-Dharmaśāstra* links the legitimacy of punishment to the preservation of social order and warns that errors in punishment produce systemic disruption.³² The *Arthaśāstra* makes that insight institutional by designing scales of fines and sanctions that deter without degrading the polity.³³ The lesson for contemporary systems is not to import the categories, many of which encode status bias, but to carry forward the design principle. Sanctions should be calibrated, not reflexive. Where a wrong yields enrichment, disgorgement and compensation should sit at the centre; where it yields pure harm, reparation and measured censure should do the work; where wrongdoing reveals a social relationship that can be responsibly repaired, structured opportunities for restitution and settlement can be recognised without abandoning public reason.

Administration and enforcement close the circle. A legal system that adjudicates without preserving records, issuing precise decrees, and supplying certified copies cannot achieve either compliance or review. The Smṛti and digest literature make record-making and decree-issuing part of what it means to judge, and early colonial syntheses, despite their limitations, preserved that emphasis by treating decrees and execution as juridical tasks rather than royal favours. Modern civil procedure renders these imperatives specific. Decrees and judgments must be drawn up and copies supplied on application, so that parties can act upon, or challenge, what the court has commanded.³⁴ Enforcement is not an occasion for humiliation. Classical texts insist that coercion be measured and directed to

³¹ IEA 1872 (n 21) ss 3, 101–104.

³² Olivelle (tr) (n 1) para 7.24.

³³ Kangle (tr) (n 22) book III.

³⁴ CPC 1908 (n 21) Ord XX, rr 6–6B.

compliance rather than spectacle, a restraint that contemporary human-rights constraints and execution rules echo in their own vocabulary.³⁵

The combined effect is a jurisprudence of reasons under constraint. Institutions are designed to make deliberation possible. Ethics are framed as duties that can be judged in practice. The lifecycle of a suit organises pleading, proof, and decision into a sequence that makes reasons testable. The philosophy of proof is an epistemology rather than a ritual, with burdens and hierarchies designed to prevent arbitrariness. Remedies aim at fittingness. Administration and enforcement secure continuity. None of this sanitises the tradition's status-laden exclusions. Those must be refused. Yet the analytic achievement remains. *Vyavahāra* shows how a legal order can be normatively ambitious without becoming procedurally capricious, and how moral purpose can be channelled through form rather than trumping it. Where contemporary courts require universal registration of civil status to secure autonomy and prevent fraud, they are deploying a rule-of-law instrument that the classical materials would recognise as a procedural device in the service of substantive ends.³⁶ Where codes require reasoned judgments and supply copies to parties, they repeat the older insistence that public power must show its workings.³⁷ The tradition, read analytically, is not a museum of rules but a repertoire of design principles. What travels is not caste-graded penalties or testimonial exclusions, but the craft ethos by which adjudication stabilises disagreement and renders authority answerable to reason.

5. Justice and Hierarchy: Caste, Gender, and Class

Classical *vyavahāra* does not merely administer rules; it distributes standing. The adjudicatory ideals surveyed earlier, impartial hearing and reasoned determination, sit alongside an explicit politics of rank in which *varṇa*, gender, and socioeconomic position condition credibility, liability, and remedy. The result is a legal order that produces recognisable due-process instincts, yet calibrates them through status, so that procedural equality is continuously negotiated rather than presupposed.

Begin with a penalty. The normative literature is unambiguous that sanctions scale with social rank. Manu's catalogue of delicts in Chapter 8 couples a graded schedule of fines and corporal punishments with the identity of offender and victim. The notorious cluster on insult and defamation illustrates the point starkly: insults directed upwards in the hierarchy attract far harsher consequences than those cast downwards, with

³⁵ Jha (tr) (n 23) book II; Kangle (tr) (n 22) book III.

³⁶ *Seema v Ashwani Kumar* (2006) 2 SCC 578 [3]–[5].

³⁷ CPC 1908 (n 21) Ord XX, rr 4–5.

even mutilatory penalties specified in certain aggravated cases. The immediate effect is distributive, since legal injury maps onto social position; the stronger effect is constitutive, because hierarchy is reproduced, not merely reflected, through punishment.³⁸

Witness law is the clearest window onto how status inflects process. Nārada's treatment proceeds by filtration: it first stipulates who may testify, then narrows the pool through categories of incompetence. The latter list is long and revealing, excluding, among others, persons deemed morally compromised, those with specific relational conflicts, and, in many contexts, women.³⁹ The structure is not a crude ban; rather, it is a set of concentric permissions and exclusions that presumes public adjudication as a male, caste-marked space. Even where women are permitted to testify, the permission is often hedged, confined to subject-matters within the domestic sphere and justified by necessity rather than principle.⁴⁰ The procedural vocabulary here, competence and credibility, is familiar; what differs is the anchoring premise that social location is probative in itself.

Manu supplies a complementary scheme. The court is instructed to differentiate classes of witnesses by rank and reputation, and to calibrate their evidentiary weight accordingly, with the further caveat that certain matters may admit women's testimony while others will not. The logic is double: evidence doctrine internalises both an epistemic claim, that some categories of persons are more reliable narrators, and a jurisdictional claim, that some matters are properly within the experiential reach of particular groups. That combination renders procedural equality contingent, not categorical.⁴¹

Gender is not only an evidentiary filter; it is also a property rule. The *strīdhanā* provisions have long been read as a partial counterweight to patriarchal control over women's labour and assets. Manu's enumeration of the "six-fold" woman's property, gifts before the nuptial fire, on procession, in affection, and from natal kin, together with subsequent gifts, recognises distinct asset streams and, crucially, routes succession of those assets to a woman's offspring even if she predeceases her husband.⁴² This is not an egalitarian charter. The same passage contains restrictions, including possibilities of reversion or diversion depending on the form of marriage contracted. Yet the juridical technique is important: by carving

³⁸ Bühler (tr), *The Laws of Manu* (n 14) 127–128.

³⁹ Jolly (tr), *The Minor Law-Books* (n 2) 79–83 ('Witnesses'), 82–83 ('Incompetent Witnesses').

⁴⁰ *ibid* 89 ('Women May be Witnesses').

⁴¹ Bühler (tr), *The Laws of Manu* (n 14) 127–128.

⁴² *ibid* 153 (Manu 9.194–200).

out a domain of assets imaginarily as belonging to the woman, the texts create a limited pocket of proprietary autonomy that can be mobilised in litigation, for maintenance, restitution, or recovery. In practice, that pocket is both shield and sieve, its efficacy contingent on proof of title and on the forum's willingness to enforce it against contrary claims by guardians or affines.

Status likewise shapes the economy of sanctions. The fine (*daṇḍa*) is everywhere, but never flat. In *Manu*, quantified penalties appear for a range of commercial and custodial defaults, sometimes keyed to the value of the loss, sometimes scaled by role. The schedule performs two functions. First, it signals a preference for pecuniary redress where possible, thereby constraining the drift towards corporal punishments. Secondly, it embeds distributive choices, because a fixed monetary penalty weighs differently on unequals. The legal form is neutral; its incidence is not.⁴³ When combined with graded penalties tied to *varṇa*, the effect is to script a deterrence regime that is simultaneously moralised and stratified, an architecture that both polices order and rehearses rank.

If the procedure is power organised, its organisation in these materials is distinctly collegial and reputational. The very idea of acceptable testimony presupposes communities of honour whose members can vouch for one another; conversely, disrepute travels quickly, disabling testimony across subject-matters. *Nārada's* chapter headings tell the story: after "Witnesses" comes "Incompetent Witnesses," then "Women May be Witnesses," and only thereafter the refinements on oaths and ordeals.⁴⁴ The order is analytic. The texts first draw the circle of voice, then experiment with devices to discipline that voice. Inside the circle, the system demonstrates familiar due-process instincts, incentives to truthful narration, and mechanisms to verify it; outside it, silence becomes structural, not accidental.

One might object that the scheme is more flexible than this portrait allows. The sources do contain exceptions and safety-valves. Women's testimony is admissible, sometimes exclusively, where women alone are privy to the facts. Analogous carve-outs exist for other excluded classes.⁴⁵ There are also moments where economic injury to the poor attracts heightened judicial concern, suggesting that judges are enjoined to read rules purposively to prevent expropriation through technicality. Even the *strīdhanā* rules can be read as embryonic devices for insulating women's assets from predatory claims. But these mitigations never efface the

⁴³ *ibid* 136–137.

⁴⁴ Jolly (tr) (n 2) 79–90.

⁴⁵ *ibid* 89.

baseline: procedural standing is allocated through social typologies that presume, rather than interrogate, hierarchy.

The ethical register is correspondingly mixed. On the one hand, the literature stresses impartiality, recusal in cases of bias, and the duty to decide for truth rather than faction. On the other hand, it permits, and sometimes commands, differential treatment on grounds of birth and gender. The reconciliation offered is a species of role morality: justice means giving each their due, but “due” is defined by location in a normative order that extends beyond the court. In such a frame, equality of process is not misdescribed; it is recast to mean congruence with dharmic station and duty. A modern reader will regard this as precisely the problem, for it allows status to masquerade as reason.

What, then, is the analytic pay-off of reading these rules as part of a procedural jurisprudence? First, it allows us to see hierarchy not merely as a substantive value but as a procedural principle, one that structures voice, burden, and sanction. Secondly, it helps separate transferable design features from intractable commitments. There is much to learn from the system’s concern with veracity, with calibrated sanctions, and with stabilising remedies through clear taxonomies of claims; there is nothing to learn from testimonial disablement by caste or gender. Finally, the reading invites a discipline of comparative restraint: the temptation to translate *pramāṇa* hierarchies into modern rules of admissibility must be resisted where those hierarchies are status-laden; the attraction of *strīdhanā* as a proto-doctrine of women’s separate property must be tempered by its conditionality and by its embedding in a regime that elsewhere suppresses women’s voice.

Put differently, *vyavahāra* exhibits due process with an edge. Its safeguards are real, but so are its silences. The task of a historically serious jurisprudence is to carry forward its techniques for truth-seeking and remedy design while discarding the predicates that make voice and protection a privilege of birth.

6. Philosophical Synthesis: Nyāya, Due Process, and the Ends of Adjudication

At the heart of the classical juridical tradition lies a tension, never entirely resolved but often productive, between two imperatives. One is epistemic, the demand that adjudication be a disciplined search for truth through reliable means of knowledge; the other is ethical-teleological, the insistence that adjudication restore and preserve Dharma, that is, a determinate moral and social order. Read together, these imperatives yield a recognisable due-process sensibility without collapsing adjudication into either positivist formalism or unconstrained equity. In Brahmanical thought, *pramāṇa*, the

canons of valid cognition, anchor a procedural aspiration to accuracy, while Dharma furnishes the end to which adjudication is ordered, namely rectification and social peace. The tradition's own taxonomy makes the synthesis visible: *ācāra*, *vyavahāra*, and *prāyaścitta*, roughly, norms of conduct, dispute-process, and sanction or expiation, are distinct yet interdependent; *vyavahāra* is the hinge between the other two, translating moral direction into institutional form and remedial consequence.⁴⁶

This synthesis is not merely schematic. The *Nāradaśmṛti* places “Legal Procedure” at the head of its *Mātrkā* precisely to secure the fairness of adjudication before turning to the titles of law. Its opening analysis insists on orderly pleading, the hearing of both parties, the disciplined reception of testimony, and a sequenced movement from issues to proof to decision, a sequence which, in modern language, constrains official discretion and orients it toward reasons rather than fiat.⁴⁷ The very fact that *Nārada* is “juridical text par excellence”, concentrating on courts and suits rather than general righteousness, underlines the point: the procedural craft of judging operationalises Dharma; it does not replace it.⁴⁸

Yet the epistemic and the ethical do not always travel together. Epistemically, Nyāya's privileging of perception, inference, and trustworthy testimony supplied a jurisprudential imagination that could grade proofs and evaluate witnesses; ethically, Dharma's insistence on status, role, and social equilibrium sometimes licensed asymmetries in voice and sanction. Classical jurists navigated this fault line by coupling exclusionary instincts and burden rules, designed to protect against error, with remedial proportionality calibrated to the moral weight of the wrong. In this register, *vyavahāra* appears as a technology of truth-seeking that serves an avowedly moral end, a view that helps explain why commentators and digest-writers insist both on adjudicative impartiality and on the public value of stability that reasons-giving can secure.⁴⁹

The same synthesis illuminates the tradition's mature hermeneutics. If Dharma is authoritative because it is transmitted, then adjudication must be justificatory, knitting decisions to sources through intelligible reasons. This is not a crude formalism; it is a discipline of justification. When classical writers defend the authority of *ācāra*, local usage, they do so by showing how living practice can be juridically accommodated without abandoning the duty to reason from authoritative materials. Hence, the recurrent

⁴⁶ Jolly (tr) (n 2).

⁴⁷ Lariviere (ed and tr) (n 5) 253–268 (*Mātrkā Prolegomena*: ‘Legal Procedure’).

⁴⁸ *ibid.*

⁴⁹ Davis Jr (n 16) 147–148; See also *ibid* 25–46, 47–69; Lingat (n 15) 176–206 (‘Dharma and Custom’); Davis Jr (n 9) 818–824.

insistence that adjudication both recognises custom and domesticates it through principled interpretation, a stance that resists the easy dichotomy between “real law” and scholastic text.⁵⁰ The upshot is a procedural jurisprudence with ethical nerve: the process is constrained so that outcomes can be defended as consonant with a public conception of the right, and outcomes are evaluated against process-based assurances that truth was competently sought.

Taking these strands together, the classical materials support three claims of contemporary relevance. First, a court’s legitimacy rests on impartial composition and structured hearing; these are not merely institutional niceties but epistemic conditions for reliable fact-finding and ethical prerequisites of public justification.⁵¹ Secondly, rules of proof and graded evidentiary hierarchies are framed to minimise decisional error without disabling judicial prudence, a balance that contemporary evidentiary law also seeks. Thirdly, reasons-giving is not an optional flourish: it is the means by which a decision locates itself within the normative universe it purports to serve, reconciling the authority of sources with the demands of justice in the case at hand.⁵² Properly understood, then, *vyavahāra* is neither a mere ritual of forms nor a free-wheeling equity. It is the forum in which Nyāya’s epistemic discipline and Dharma’s moral telos meet, sometimes uneasily, but often fruitfully, to produce adjudication that aspires to be both accurate and just.

7. Comparative Conversation with Modern Law

This section tests the portability of design principles distilled from *vyavahāra* to contemporary legal settings. The aim is neither hagiography nor anachronism. It is to appraise how procedural ideas anchored in Dharma might illuminate modern debates about natural justice, evidence, settlement, and the limits of legal transplantation.

The first point of comparison concerns natural justice. Classical materials sketch an adjudicative ethos that values impartiality, hearing the other side, and reasons consonant with Dharma and practical rectitude. The *vyavahāra* chapter in the Oxford History volume offers a synoptic account of the procedural sequence and its normative orientation, including the composition of courts, the role of assessors, and the duty to weigh arguments rather than merely recite rules.⁵³ Read together with Davis’s

⁵⁰ Lingat (n 15) 176–206; Davis Jr (n 9) 818–824.

⁵¹ Lariviere (n 5) 253–268.

⁵² Davis Jr (n 16) 147–148; Lariviere (n 5) 253–268; Davis Jr (n 9) 818–824.

⁵³ Patrick Olivelle, ‘Legal Procedure: *vyavahāra*’ in Timothy Lubin, Donald R Davis Jr and Jayanth K Krishnan (eds), *The Oxford History of Hinduism: Hindu Law* (OUP 2018) 283–286.

sustained treatment of vyavahāra as a domain for resolving “doubts and disputes,” the picture is of a forum constrained by procedure and oriented to reasoned decision, even where the ethic of Dharma supplies the telos.⁵⁴ Modern common-law formulations of natural justice converge with this spirit. The Indian Code of Civil Procedure requires early and explicit issue-framing so that the dispute to be tried is transparent to both parties and to the court.⁵⁵ This coupling of impartiality and intelligible issues is not a mere formalism; it expresses the same commitment to a fair hearing that the classical materials impute to the ideal sabhā.

A second axis is evidence. Classical jurisprudence links adjudication to pramāṇa theory, producing a hierarchy of proof in which documents, witnesses, and oaths bear differentiated weight.⁵⁶ The Oxford History essays on legal procedure and titles of law provide the most accessible synthesis for modern readers, showing how these hierarchies translate into practical rules of pleading, proof, and remedy selection.⁵⁷ Contemporary doctrine, although differently grounded, tracks this logic. The Indian Evidence Act defines “evidence” with precision and allocates the burden of proof by rule, not status or office.⁵⁸ Burden rules are not decorative: they discipline adjudication by specifying who must persuade and to what standard.⁵⁹ Nothing in the classical materials compels us to adopt the same hierarchy, but the shared instinct is clear. Reliable proof must be privileged over mere assertion, and rules about who bears the burden must be clear at the outset.

The third theme is reasons-giving. Classical jurists present adjudication as a moral craft that requires reasons tethered to Dharma, not ex cathedra pronouncements. Davis insists that Hindu law is not a mere command, but a practical theology of reasons embedded in ordinary life, where justificatory discourse matters because it links rule to purpose.⁶⁰ Contemporary courts frame this as a constitutional discipline. In *Seema v Ashwani Kumar* the Supreme Court tied the administrative practice of universal marriage registration to the rule of law, giving reasons about transparency, proof, and the prevention of fraud that resonate with a classical concern for reliable records and social order.⁶¹ The continuity is

⁵⁴ Davis Jr (n 16) 108–115.

⁵⁵ CPC 1908 (n 21) Ord XIV, r 1.

⁵⁶ Olivelle (n 53) 283–285; Lingat (n 15) 186–194.

⁵⁷ Patrick Olivelle, ‘Titles of Law: vyavahārapada’ in Timothy Lubin, Donald R Davis Jr and Jayanth K Krishnan (eds), *The Oxford History of Hinduism* (n 53) 299–304.

⁵⁸ IEA 1872 (n 21) s 3.

⁵⁹ *ibid* ss 101–103.

⁶⁰ Davis Jr (n 16) 144–152.

⁶¹ *Seema v Ashwani Kumar* (n 36) 582–584.

not conceptual identity but institutional temperament: reasons are owed because justice is a public practice.

The fourth theme concerns diversion and settlement. Classical texts countenanced community-based resolution, recorded compromise, and calibrated sanctions. The same Oxford History discussion notes, in plain procedural terms, the place of negotiated settlement within the lifecycle of a suit.⁶² Modern criminal process authorises limited compounding, with statutory lists and judicial supervision that track seriousness and consent. Section 320 of the Code of Criminal Procedure structures this space; composition is possible for minor offences, and forbidden for serious ones, while composition operates as an acquittal where permitted.⁶³ The Bangladeshi Code preserves an analogous regime, reflecting a shared postcolonial inheritance.⁶⁴ The point for comparative design is not that ancient settlement rules should be re-enacted, but that any diversionary architecture today must be rights-compliant, consent-based, and supervised, with a clear statutory taxonomy.

Transplantation has limits. Classical materials embed status hierarchies that modern law must reject. Two examples show the point with precision. In *Independent Thought v Union of India* the Supreme Court read down the marital exception to statutory rape as applied to minors, aligning criminal law with the child's bodily integrity and international commitments; the judgment's reasons make status an inadmissible ground for vitiating consent.⁶⁵ In *Vineeta Sharma v Rakesh Sharma* the Court affirmed daughters' coparcenary rights irrespective of birth date, rejecting patriarchal vestiges and insisting on equal lineage capacity.⁶⁶ Both decisions exemplify what this article proposes as the correct comparative method. Where a classical rule is status-laden, it is not portable. What may travel are procedural design principles that served fairness even in status-differentiated worlds: explicit issues; transparent burdens; recorded reasons; and proportionate remedies.

A final comparative register concerns institutional humility. Classical jurists were alert to the text–practice gap and the need for prudential calibration. The Oxford History chapters on procedure and taxonomy emphasise variation across regions and schools, and the need to read

⁶² Olivelle (n 53) 285–286.

⁶³ The Code of Criminal Procedure, 1973 (CrPC 1973), ss 320(1), 320(8)–(9) (India).

⁶⁴ The Code of Criminal Procedure, 1898 (CrPC 1898), ss 345(1), 345(8)–(9) (Bangladesh).

⁶⁵ *Independent Thought v Union of India* (2017) 10 SCC 800 [107], [197].

⁶⁶ *Vineeta Sharma v Rakesh Sharma* (2020) 9 SCC 1 [137].

doctrinal statements with a practised eye to context and use.⁶⁷ That ethos aligns with modern judicial restraint in procedural design: rules should be general enough to guide, and flexible enough to accommodate context, but not so fluid as to invite arbitrariness. The Code of Civil Procedure's framework for issues and evidence, and the Evidence Act's structure of relevancy and burden, achieve precisely this mix.⁶⁸

The ledger for designers is therefore short and actionable. First, ensure impartial adjudication through structural safeguards and recusals, and require the court to identify and record issues at the threshold.⁶⁹ Second, anchor proof in rules that privilege reliability, calibrate burdens explicitly, and avoid status proxies.⁷⁰ Third, cultivate a reasons-giving culture that links outcome to principle in publicly intelligible language.⁷¹ Fourth, enable settlement only within a statutory matrix that secures consent and guards against coercion, with judicial oversight and faithful records.⁷² Fifth, resist transplantation of status-based rules, but learn from classical proportionality in sanction and remedy.⁷³ The comparative lesson is not that *vyavahāra* anticipated the modern rule of law. It is that its procedural sensibility, read critically, can inform a contemporary jurisprudence that is both principled and modest.

8. Normative Implications and a Contemporary Design Ledger

A jurisprudence that treats *vyavahāra* as the method by which Dharma is made actionable invites a discriminating stance towards reception. Some elements are normatively attractive because they discipline public power and enhance epistemic reliability. Others must be rejected because they entrench status and obstruct equal citizenship. A third group can be rehabilitated if redesigned with safeguards that respect autonomy and reasoned legality.

First, what should be carried forward. The classical materials present adjudication as a structured craft that moves from pleading to proof to judgment, with an insistence on orderly decision making rather than mere fiat. Contemporary courts should keep that craft ethos by entrenching reasons-giving and issue-wise determinations. India's Code of Civil Procedure already requires courts to state their decision on each issue and

⁶⁷ Olivelle (n 53) 283–286; Olivelle (n 57) 299–304.

⁶⁸ CPC 1908 (n 21) Ord XIV; IEA 1872 (n 21) ss 5–11, 101–103.

⁶⁹ CPC 1908 (n 21) Ord XIV, rr 1–6.

⁷⁰ IEA 1872 (n 21) ss 3, 101–103.

⁷¹ Davis Jr (n 16) 108–115, 144–152.

⁷² CrPC 1973 (n 63) s 320; CrPC 1898 (n 64) s 345.

⁷³ Lingat (n 15) 186–194; Olivelle, (n 53) 285–286.

to express the reasons that support the decree.⁷⁴ The same procedural ethic recommends transparent, accessible records. Copies of judgments and decrees should be promptly prepared and supplied on application so that litigants and third parties can scrutinise what the court has done.⁷⁵ A further inheritance is evidentiary sobriety. The classical theory of proof distinguished between stronger and weaker *pramāṇas* and counselled attention to credibility, context, and burdens.⁷⁶ Modern law should retain that orientation by holding parties to their burdens of proof and by insisting on relevance and sufficiency before findings are made. The Indian Evidence Act captures these commitments through its definitions and allocation of proof burdens.⁷⁷ Finally, proportionality in sanctioning is a transportable design principle. Where the textual tradition links punishment and penance to the nature and gravity of the wrong,⁷⁸ contemporary systems should similarly calibrate remedies and sentences to harm, culpability, and restoration.

Second, what must be discarded. Any procedural or remedial rule that privileges or silences persons by caste or gender is incompatible with a constitutional order of equal status. The testimonial asymmetries and graded penalties that follow *varṇa* or gender categories cannot survive translation into a modern legal system committed to equal protection. Their historical presence teaches us something about the moral psychology of the sources, but it yields no rule fit for contemporary use.

Third, what requires careful redesign. Community-based or corporate dispute resolution has virtues that should not be lost, but its redeployment must be supervised by public law. Historical practice shows that guilds and other organised groups often managed disputes with efficiency and social knowledge.⁷⁹ A modern ledger should therefore preserve diversion to consensual processes while guarding against coercion and opacity. Two conditions are essential. Consent must be real, informed, and revocable. Oversight must be judicially anchored, with records and reasons available for review. A parallel concern arises in matters of civil status. Registration, documentation, and baseline formalities function as rule-of-law devices that protect choice, reduce fraud, and enable enforcement. The Supreme

⁷⁴ CPC 1908 (n 21) Ord, XX rr 4–5.

⁷⁵ CPC 1908 (n 21) Ord XX, rr 6, 6-A, 6-B.

⁷⁶ Rocher (n 11) 361–394.

⁷⁷ IEA 1872 (n 21) ss 3; 101–104.

⁷⁸ McClish (n 12) 273–282; David Brick, ‘Penance: *prāyaścitta*’ in Patrick Olivelle and Donald R Davis Jr (eds), *Hindu Law* (n 7) 313–324.

⁷⁹ Donald R Davis Jr, ‘Intermediate Realms of Law: Corporate Groups and Rulers in Medieval India’ (2005) 48(1) *Journal of the Economic and Social History of the Orient* 92, 95–100, 103–106.

Court of India's insistence on universal marriage registration illustrates how a simple administrative requirement can support autonomy and legal certainty.⁸⁰

Drawing these strands together, a contemporary design ledger shaped by vyavahāra's best insights would read as follows.

- i. Inclusivity by rule. Standing, witness competence, and access to process must be universal. No category-based disqualification. Where capacity is in doubt, prefer assistance and accommodation to exclusion.
- ii. Reasons-giving culture. Every adjudicator should frame issues, evaluate proof against burdens, and give reasons that an informed reader can follow. Order XX of the Code of Civil Procedure already models this expectation and should be enforced without dilution.⁸¹
- iii. Transparent records. Pleadings, orders, and judgments should be recorded, preserved, and disclosed according to clear norms that balance privacy with accountability. Decree-copy and judgment-copy rules must be implemented in practice, not merely on paper.⁸²
- iv. Evidence and burdens. Decisions must track the allocation in the Evidence Act and articulate why the party bearing the burden has or has not discharged it, with explicit findings tied to the material on record.⁸³
- v. Proportionality and restorative options. Sanctions and remedies should fit wrongs. Where appropriate, penalties should be combined with restitution and structured opportunities for repair under supervision. Classical reflections on punishment and penance support the ideal of calibration rather than uniform severity.⁸⁴
- vi. Diversion with safeguards. Encourage mediation, conciliation, and community-based resolution only under conditions of documented consent and judicial oversight, and always with a record sufficient for review. Historical experience with corporate adjudication recommends this hybrid design.⁸⁵

⁸⁰ *Seema v Ashwani Kumar* (n 36) [3]– [5].

⁸¹ CPC 1908 (n 21) Ord XX, rr 4–5.

⁸² CPC 1908 (n 21) Ord XX, rr 6, 6-A, 6-B.

⁸³ IEA 1872 (n 21) s 3.

⁸⁴ McClish (n 12) 273–282; Brick (n 78) 313–324.

⁸⁵ Davis Jr (n 79) 95–100, 103–106.

- vii. Status neutrality. Any residual rule whose operation depends on caste or gender hierarchy is excluded. Reform must be explicit rather than tacit, since tacit retention of status rules corrodes equality and procedural fairness.

The animating thought is simple. The procedural jurisprudence of *vyavahāra* has ethical nerve when it secures truthful decisions through fair processes that respect persons as equals. If contemporary designers carry forward its craft virtues, discard its status commitments, and redesign its communitarian instincts with rights-compliant controls, they can build institutions that are both disciplined and humane.⁸⁶

9. Conclusion

Read as a whole, the *vyavahāra* materials offer more than a catalogue of wrongs. They disclose a procedural jurisprudence that seeks truth with discipline, links proof to pleaded titles, and calibrates remedy to harm, while remaining anchored in an ethical vocabulary of *Dharma*. The architecture is recognisable: courts constituted with an expectation of collegial judgment, sequenced stages from plaint to decision, and structured modes of proof that privilege testimony, documents, and oath.⁸⁷ The same sources, however, embed graded personhood, most visibly in testimonial competence and penalties that vary by status and gender. The tradition therefore carries two legacies at once, a commitment to order and fairness in adjudication, and a hierarchy that limits equal voice.

The normative claim of this article is selective reception. Design principles that promote reasons, clarity and evidentiary reliability can travel; status-laden rules should not. The *Arthaśāstra*'s distribution of civil and public-order work across Books 3 and 4 is a design choice that moderating legislatures may adapt, using specialised forums for different classes of dispute without diluting common guarantees of fair process.⁸⁸ Likewise, the Dharmasūtra and Smṛti discussions of proof, when read as a hierarchy of reliability rather than a ritual order, can inform a contemporary preference for traceable records, credible witnesses, and careful, defeasible presumptions.⁸⁹

On this reading, convergence with modern procedural templates is neither accidental nor complete. A disciplined culture of reasons remains central. In contemporary codes, a judgment must identify issues, state the decision,

⁸⁶ Olivelle (n 8) 283–298; McClish (n 7) 299–312.

⁸⁷ Olivelle (tr) (n 14) ch 8, paras 8.1–8.126; Jha (tr) (n 23) paras 2.1–2.30; Lariviere (ed and tr) (n 5) paras I.1–I.44.

⁸⁸ RP Kangle (tr) (n 18) book 3; book 4.

⁸⁹ Olivelle (tr) (n 5) 252–261; Davis Jr (n 16).

and give reasons.⁹⁰ The classical demand for a reasoned award was less explicit, yet the expectation of measured decision, recorded for review and correction, lies close to the surface of the commentarial traditions. Any contemporary borrowing should insist on transparent records, intelligible reasons, and a publicly inspectable archive.

The design ledger that follows is concise. Carry forward, first, the discipline of pleading into defined heads, reframed as clear causes of action with allocated burdens of proof.⁹¹ Carry forward, secondly, a probative ordering that prefers reliable to merely assertive evidence, fortified by documentary practice. Discard, categorically, testimonial and penal asymmetries grounded in caste or gender. Redesign, finally, the space for settlement and restitution so that it respects consent in fact, not only in form, and operates under judicial supervision with reasons on the record.

In this sense *vyavahāra* can be read as a procedural jurisprudence with ethical nerve. It affirms that process is a moral practice as much as an administrative one. The comparative lesson is not to transplant rules across centuries, but to take seriously the craft of adjudication: careful issues, fit remedies, and decisions that explain themselves.

⁹⁰ CPC 1908 (n 21) Ord XX, rr 4(2), 5.

⁹¹ IEA 1872 (n 21) s 101.