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***“The Dravidian School of Thought and contribution to the juridical sciences is a Science or  
Signs of Justice?”***

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## **ABSTRACT:**

The Tamil civilization is said to be one of the oldest civilization since Sangam era. The concept of Hindu Jurisprudence is subjective and subset to the objective and superset Dravidian school of thought and jurisprudence. The Epistemology study reveals the Dravidian and Hindu thought of jurisprudence is on par with the west and principles are followed by the plural society. In the Contextual understanding, both the school of thoughts co-exists together as a symbiotic relationship with each other and contributes to the juridical sciences as the wholesome package of the Ancient Indian legal philosophy system. The Jurisconsults like Thiruvalluvar, Ilangovadigal in the Dravidian school and other Rishi's like Kautilya, Yagnavalkya, have corroborated the progressive development of the philosophical principles which is applied in law. The legal and political concepts such as justice, equality, equity, fraternity, state, Righteous Ruler are expounded and experimented as jurisprudential understanding in the legal sphere.

Key words: Indian Legal Philosophy, Dravidian School, Hindu Jurisprudence etc.,

## **INTRODUCTION:**

“Learning is Excellence of Wealth that none destroy; to man nought else affords  
reality of joy” (Kural-400)

-Thiruvalluvar.

In the era of the modern legal system nearly more than 2000 years ago, when the jurisconsults of the other civilizations and the communities were formulating the code of law, ethics and certain jurisprudential norms, the Indian society have made such the spirit in the Indian legal system and has evolved many theories and principles which has been accepted and followed in the international community. They are many ancient Rishis and Philosophers like Kautilya, Thiruvalluvar, and Yagnavalkya etc., whose contribution in the Indian legal system is remarkable. One of the ancient Dravidian jurist ( Dravidian school of thought ) was the Thiruvalluvar , the pinnacle of universal wisdom and his immortal work Thirukkural has been considered has the gospel of Tamils, As oovaiyar has rightly said , ‘anuvai thulaithol kadalai pukati kurugu tharithaa kural’<sup>1</sup>. Indian jurisprudence should not jettison from its repertoire of legal knowledge the cosmic teaching of Thiruvalluvar, the cornucopia of wider wisdom and ethics in public life and this generation has to learn this Dravidian light of the east<sup>2</sup>. In this paper going to see about the thiruvalluvar’s and other Tamil philosophers contribution to the juridical science and Indian Legal philosophy as supra set and Hindu Jurisprudence as a subset of it.

## **NEXUS BETWEEN LAW AND LITERATURE:**

“Law could be the subject matter of literature....or literature itself might be, have been or may become law”<sup>3</sup>. The Ethical Discourse that informs the law can be gleaned from the moral lessons depicted in literature<sup>4</sup>.

## **UNDERSTANDING PHILOSOPHICAL JURISPRUDENCE**

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<sup>1</sup>As quoted in thiruvalluvamalai, ‘Garland of Valluvar’, is an anthology of ancient tamil paeans.

<sup>2</sup>As said by Justice V.R.Krishna Iyer in the foreword of the book, ‘jurisprudential thoughts of thiruvalluvar, Dr.Ambedkar and Dr.Kalaignar’ written by Dr.K.P.Krishna chetty. pg.no .I, abhyudaya publishers, Chennai, 2000.

<sup>3</sup> As Quoted by Former Chief Justice of the Delhi High Court and Former chairman of the Law Commission Hon’ble Justice.A.P.Shah in delivering the second the Hindu Lit for Life Annual Lecture , The Hindu.

<sup>4</sup> Ibid.

Hindu jurisprudence unlike the western legal system, laid the stress on duties of individuals. The ancient Rishis (thinkers) in rightly felt the imperative need of the society in the peace and harmony based on the two cardinal principles of **Rita(Order)** and **Dharma**. Law is equal to Dharma and Dharma is parallel to justice In the puranic period, Thiruvalluvar was the greatest seer. His erudition was so unparalleled, his understanding of the need for just law and thinking were so deep and his views on law and justice were so specific that his Thirukkural constituted the foundation of the Dravidian school of thought of Hindu Jurisprudence in this sub-continent and his ideas ramified and helped to evolve a code of higher principles of Law, Justice and Equity.

### **Dharma and Thirukkural:**

According to Dharma, forgetting of it is failing to perform one's duties. In Thirukkural it has been said as the '**Aram**'. There is no great wealth one can acquire than dharma and no misfortune greater than the forgetting of it. Go as far as your strength and resources permit without serving from the path of Dharma. Keep the mind from evil thoughts; this is the whole of dharma.i.e. Arathuppal: virtue and justice.

### **Law of karma:**

'**Oozh**', Karma links all the good and bad luck to what was done or thoughts in precious birth.

## **CONCEPT OF JUSTICE, EQUITY (IMPARTIALITY) AND EQUALITY:**

The concept has been expounded through the medium of **scepter**, which is a symbol of sovereignty. His concept of justice is based upon the twin principles of 'righteous laws' and 'equity'. According to him, the **righteous laws** is a **common reason of the people** manifested in their collective approval (consensus). Common reason of the people (law of reason) is the product of the social, economic and political environments of one generation, it may acquire new meaning and dimension in the changed environments of the another generation.<sup>5</sup> The need of the

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<sup>5</sup> Thirukkural ,Chapter 56, 'The cruel sceptre', kural 551&552;Than one piles the murderer's trade, more cruel is the king, who all injustice works, his subjects harassing.

wise or **righteous ruler** and the necessity of righteous laws alone ensure order and harmony in the society<sup>6</sup>. The Kural 556; To rulers' rule stability is sceptre right; when this is not quenched is the rulers' light. The equity has two streaks in it one is mercy (benignity) and the other is an innovative element.<sup>7</sup> The theory of equality (justitia distributiva) has also been explained by him. The **kaniyan pokundanar** maxim "yathum urae yavarum kelir", has capsulated the inclusivity in the system.

### **CONCEPT OF CRIMINAL JUSTICE:**

Thiruvalluvar expounded deterrent and exclusionary theory of punishment. The clause '**for length of days**', 'must be conducted with strictness ; and when a person is proved guilty he must be punished gently. That is the punishment has to be awarded with equanimity , the prolonged enquires and not the hasty investigations. The idea is that no innocent persons should be subjected to punishment , much less to cruel punishment. The principles that let hundred guilty persons escape but not an innocent person suffer and the punishment must be proportionate to the act of commission or omission<sup>8</sup>.

### **THEORIES OF 'DUE DEGREE OF INVESTIGATION' AND 'PROPORTIONALITY':**

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<sup>6</sup>Ibid; kural 553,554,556;who makes no daily search for wrongs ,nor justly rules, that king doth day by day his realm to ruin bg; whose rod from right deflects ,who counsel doth refuse, at once his wealth and people utterly shall lose.

<sup>7</sup>Ibid; kural 546,571,575&541

<sup>8</sup> Ibid ;Kural 550;(the right sceptre) By **punishment of death the cruel to restraint**, Is as when farmer frees from weeds the tender grain; Kural 561;(absence of terrorism) who punishes, **investigation** made in due degree, so as to stay advance of crime, a king is he; Kural 562; For the **length of days** with still increasing joys on Heav'n who call, should raise the rod with brow severe, but let it gently fall. kural 567; harsh words and punishments severe **beyond the right**, are file that wears **away the monarch's** conquering might.

The Theory of due degree of investigation has said in the kural 541; search out, to no one favour show; with heart that justice loves, consult, then act; this is the rule that right approves, this is akin to the modern principle of procedural due process.

The Theory of 'proportionality' of punishment which means punishment must fit into the nature of offence is another lofty jurisprudence principle. According to valluvar, they are two aspects, firstly, avoidance of cruel punishment and secondly the consideration of mercy while awarding the punishment.

"Mercy seasons justice!": The merchant of venice

Portia gave the clear exposition of this concept of valluvar. Antonio, a merchant of venice, owed a sum of money to Shylock, a rich Jew. According to the bond entered between them, if Antonio fails to return the amount, it shall be lawful for the Jew to claim 'a pound of flesh, to be cut off nearest the merchant's heart'. This is the penalty contemplated in the bond. When Antonio expressed his inability to pay the debt amount, imposition of penalty became inevitable. Portia says, "the quality of mercy is not strained; it droppeth as the gentle rain from heaven". The phrase 'mercy seasons justice' connotes what Thiruvalluvar long back said, 'let rod gently fall'<sup>9</sup>, that is, 'punish with mildness'.

Silapadikaram – elongovadikal : proper application of mind

The Kannagi-Pandyan king confrontation episode, over the execution of the Kovalan who was not stolen the queen's anklet it was the goldsmith, culprit. The king misunderstood and executed Kovalan as thief and gave death sentence to him. On hearing, Kannagi approached the castle of the Pandiya king as proved that her husband is not thief by stating that the stones in the anklet which her husband was only muttu (pearl) stones not the mannikam stones. This scene has proved that without the due degree of investigation the king has executed the innocent person before the court of law. In this the elongovadikal in the character of Kannagi applied the valluvar

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<sup>9</sup>Kural – 562, For the **length of days** with still increasing joys on Heav'n who call, should raise the rod with brow severe, but **let it gently fall**.

principle of 'due degree of investigation' and the elongovadikal has profounded the '**principle of judicial accountability**'<sup>10</sup>, which is the modern principle of jurisprudence.

However high you are , law is above you : Rendering justice by Manuneethi cholam, principled the **rule of law**, to the cow.

### **SUMMATION:**

There is a progressive development of Jurisprudence but it has the strong foundation of school of thought which determines the existence of the legal principles. The Hindu jurisprudence clearly speak about the concept of dharma and karma which is also equated by the saint Thiruvalluvar as the aram and ozh respectively. The episodes of the silapathigaram and the manuneethi cholam have expounded the principles of rule of law and other theories which is accepted by all the jurists and followed by the international community at large. The kanyasulkam maxim of yathum urae yavarum kelir provides the epitome of inclusivity and broaden the scope of Law. The Thirukkural has been an ethical way of justifying the law.

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<sup>10</sup>Silapathigaram

## Researcher/Scholar Index

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