

## The Law of War and Peace in Ancient India

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War and peace in Ancient India considered as policy of foreign affairs. War was the chief means by which territory was annexed or rulers defeated in ancient India, which was divided into multiple kingdoms, republics and empires. Often one empire predominated or different empires co-existed. The Vedic literature (1500 – 1000 BC), the two epics *Ramayana* and the *Mahabharat* (1000 - 600 BC), *Arthashastra* of Koutilya (c. 4th century BC) and Banabhatta's *Harshacharita* (c. 7th century A.D), all key texts regarding warfare in ancient India, testify to this. Troops were recruited, trained and equipped by the state (*maula*). There were many communities and forest tribes (*atavika*) that were known for their military skills and prized as such. Such people lived by the profession of arms (*ayudh jivi*). Villages providing soldiers were called *ayudhiya*. Mercenaries (*bhrita*) also existed in large numbers as did corporate guilds of soldiers (*shreni*) and they were recruited whenever required. In Ancient India war followed by annexation and sometimes peace negotiations.

Kautilya says "offensive operation is war".<sup>1</sup> Here 'vighraha' means doing harm to, and carrying on hostilities (*drohacarara*). According to Sukracarya, 'that is said to be *vighraha* or war by which the enemy is oppressed and subjugated'.<sup>2</sup> In Kamandaka's word, *parasparapakarena* is really significant, there must be the mutual intention to do harm, or otherwise it will be no war.

The *Amarakosa* deals with 'there must be operations i.e. hostilities or contest there must be an intention to carry on such operations or in other words the intention to do harm, and in fact there cannot be any offensive operation unless there is a desire backing it. It is worth while to note in this connection that according to the modern definition of war also both contest and intention must co-exist in order to make war. Mere hostilities will not make war. Parties must intend to end 'peaceful relations' and substitute 'for them those of hostility with all the legal incidents thereof'.<sup>3</sup> It is also significant that the Hindu authorities also have drawn a line of difference between *vighraha* and *yana*.

It, therefore, follows that mere outbreak of hostilities would not make war; there must be a desire to carry on operations with a view to ending peaceful relations. It is also to be remembered in this connection that war is one of the aspects of the six-fold policy, outlined by the ancient authorities on law and polity.

Indian authorities have expressed themselves very strongly against war which, according to them, could be hazarded only as a last resort; after all other means of gaining one's objectives had been exhausted. For, war often leads to mutual destruction<sup>4</sup>. Manu and Kautilya also referred to that before actually going to war, a state should try the three-fold method of *sama* (conciliation), *dana* (gifts), and *bheda* (dissension).<sup>5</sup>

These are only a few illustrations which go to show how one can harass the enemy by such methods, falling short of actual war. Such methods, it may be pointed out, were to be adopted very cautiously so as to avoid the risks of war, and were to be exercised within the framework of normal diplomatic relations. These were means to gain one's objectives without going to war (*ayuddhamekantasiddhi*)<sup>6</sup>.

It, therefore, follows that in ancient India reprisals differed from war in that these did not indicate any rupture of diplomatic relations and were mostly limited in scope. One could adopt these methods even formally remaining at peace with another, and this did not, as a rule, mean any rupture of diplomatic relations. These methods did not necessarily envisage a violent change and constituted in Kautilyan phraseology a silent battle.

In ancient India a formal declaration to the effect that a state intended to wage war was necessary. The term *vigrihya* (i.e. declaring war) so frequently used by Kautilya and other authorities only confirms the view that some sort of a declaration was necessary. Thus it has been stated in the *Ramayana* that before starting his assault on Lanka, Rama, in accordance with the strict principles of *Rajadharm*, sent an envoy to Ravana with his terms. The terms were unconditional surrender and restoration of Sita or battle. In our view such a declaration was made by means of a *sasana* or royal writ, as these were considered very important because of their utility in times of war and peace<sup>7</sup>.

Further, it has been stated by Kautilya that the duties of an ambassador and who plays a very important role between the states. He however be taken to mean something like an ultimatum, and in that case, it is certain that a state delivered an ultimatum through its ambassador before going to war. "When a conqueror felt that he was in a position to invade the foreigner's country, he sent an ambassador with the message "fight or submit"<sup>8</sup>.

Besides terminating friendly relations between the warring states, outbreak of war in ancient India brought about certain other changes in their legal relations.

(a) It terminated ordinary diplomatic intercourse. Kautilya has referred to the rebuke of a messenger sent by the enemy to the conqueror (*vijigisu*). It means that the conqueror who has declared war on another does not favour diplomatic negotiations during the progress of a siege or war.

(b) At times, outbreak of hostilities between two states led to the detention of a diplomatic mission, as has been hinted at by Kautilya.<sup>9</sup>

(c) *Mantra-yuddha* (battle of intrigue), or *tushnim-yuddha* (silent battle) or *kuta yuddha* (battle of wits) immediately follows, resulting in the complete suspension of all normal inter-state relations, and brisk political-cum-military activities on both sides. Spies masquerading as harmless foreigners or *dutas* (for *dutas* were full-fledged diplomatic persons, entitled to all the privileges and immunities thereof) become active, gathering all sorts of information useful to their masters, and winning over important political factions to their sides.<sup>10</sup>

(d). Private individuals are at once deprived of the right to maintain friendly or peaceful relations with foreigners, and in case they were found doing so, they were branded as '*dusyans*' (collaborators i.e. traitors) and treated as such.<sup>11</sup> Dealing in any form-political, social or otherwise-with the enemy or with his agents, in times of war, was dangerous, and anybody found violating this principle was held guilty of high treason punishable in accordance with law. At times persons found collaborating with the enemy were put down by means of a policy of conciliation and gifts.

(e) Treaties, no matter, if they were formally repudiated or not, generally ceased to be operative on the outbreak of war. This was largely due to the fact that on the outbreak of war, continuation of normal relations between two warring states was politically a somewhat inconceivable proposition.

These are all common factors as their foreign policy, but there were other considerations too. According to Kautilya, a king's greatness or efficiency largely depended upon his ability to find out the proper time and occasion for handling matters of peace and war with the enemy (*sandhivibhage, vikramavibhage*).<sup>12</sup> Further in the opinion of Kautilya it was quite possible on the part of a king to maintain a policy of *asana* (remaining neutral) even after declaring war (*vigrihysana*). In our opinion this term suggests that in certain cases ordinary inter-state relations did not cease at the very start of war. Even we compare this to the present foreign policies in the world.

Hence we conclude that in judging the general effects of war upon treaties in ancient India, the criterion in the vast majority of cases was utility, and if circumstances and conditions favoured the maintenance of treaty obligations treaties were not repudiated by states, if on the contrary, these proved unhelpful, these were forthwith denounced by warring states. Mere outbreak of war did not operate to terminate all treaty obligations, their maintenance or repudiation depended more or less upon circumstances. Where the contestants came to feel that more good was likely to follow from maintenance of treaties than from their repudiation, they did not repudiate them. We, therefore, call it a utilitarian concept of treaty obligations.

Ancient Indians meant by the term 'independence' or one's own rule (*svarajya*) i.e., its own right to manage its internal and external affairs, free from all outside control. This concept of *svarajya* or *aparadhinatva* was the very essence of sovereignty. "No *svarajya*, No Sovereignty", was the universally accepted theory'.<sup>13</sup>

Naturally such a concept of independence or *svarajya*<sup>14</sup> hardly left any room for any outside interference or control, sovereign states could manage their own affairs in whatever way they liked. But there were cases in which intervention by other states did occasionally take place. But these were exceptional cases, and intervention in the affairs of another state which looked like an invasion of its sovereign rights took place more or less on the following grounds ;

- (a) Intervention on the strength of an implicit previous understanding.
- (b) Intervention in self-defence i.e. to ward off imminent danger to the invading power.
- (c) Intervention on the ground of humanity.
- (d) Intervention to prevent continued misrule in a state.
- (e) Intervention in order to preserve the balance of power
- (f) Intervention on other grounds

Intervention also took place on other grounds which are more or less indefensible. Thus intervention by one or more powers at the request of one of the parties to a civil war was, though not uncommon, far from defensible. This was in the nature of a 'domestic fight—a civil war'—and the intervention of the general consensus of opinion of authors on polity in ancient India was against intervention particularly when intervention was likely to lead to an armed conflict. This does not however mean that they favoured isolationism

in inter-state relations. Their emphasis on the six-fold policy (yuddha, vighraha, yana, asana, samsraya and dvaidhibhava) and their constant refrain to the states to follow the six fold policy in their dealings with one another, do suggest that ancient Indian authorities on law and polity definitely rejected isolationism. But intervention was not a very 'wholesome expedient since it might bring in war which was not to be resorted to lightly, for, victory achieved in war was highly reprehensible.<sup>15</sup> This militates against the principles of intervention when it meant some sort of demonstration of armed power in some cases, and armed conflict in others. Kautilya however favours interference in the affairs of other states on such grounds as diplomacy, self-aggrandisement, self-interests etc.

But in view of the fact that most of the earlier authorities generally advocated a policy of peace and war on a just cause only, it seems rather unlikely that states in ancient India as a rule made a liberal use of their powers of intervention. So it appears that cases of intervention in ancient India were somewhat infrequent, and intervention was rather the exception than the rule.

Further, it may be of some interest to note in this connection that cases of intervention which took place in the nineteenth or the twentieth centuries were more or less on the grounds on which these took place in ancient India. It is also remarkable of this modern period that world public opinion is now being organised against the practice of intervention in the affairs of other independent sovereign states, though it has by no means become obsolete.

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