Divergent Interpretations in the Dharmaśāstra:
The Case of *Gautamadharmasūtra* 13.12-13

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Abstract

There are instances in the Dharmaśāstra where medieval commentators, as well as contemporary scholars, propose different interpretations of certain passages in the root texts (*Dharmasūtra*s and *Dharmaśāstra*s or *Smṛti*s). A notable example is *Gautamadharmasūtra* 13.12-13, where the term *śapatha* has been interpreted in various ways. The two main commentators on the text, Maskarin and Haradatta, offer differing explanations, as do modern scholars. The purpose of this paper is to analyse the interpretations proposed for these two *sūtra*s and to suggest textual parallels that may help to identify the most accurate reading.

Key Words – Dharmaśāstra; *Gautamadharmasūtra*; judicial procedure; witnesses; oath

1. Introduction

The evolution of judicial procedure (Skt. *vyavahāra*) in Indian jurisprudence is notably complex. Initially, early Dharmaśāstra root texts (such as the *Dharmasūtra*s of Āpastamba and Gautama)[1] provided only partial rules covering specific procedural aspects. Over time, this framework developed into a more comprehensive and intricate system, as reflected in Gupta and post-Gupta Dharmaśāstra root texts (including those preserved in manuscripts, such as the *Yājñavalkyasmṛti* and *Nāradasmṛti*[2], and those reconstructed through quotations found in medieval Dharmaśāstra commentaries and legal digests, such as the *Bṛhaspati-*, *Kātyāyana-*, and *Pitāmahasmṛti*)[3]. The treatment of judicial procedure expanded to encompass – among other elements – the court, the assessors, the litigating parties, the stages of a lawsuit, the judicial evidence, and the areas of litigation (Skt. *vyavahārapada*)[4]. Broadly speaking, procedural elements introduced in a given work are generally adopted, preserved, and developed in subsequent works. This has been the case since the first centuries of the Common Era, starting with the composition of the *Mānavadharmaśāstra*[5]. Compared to the earlier *Dharmasūtra*s, this work profoundly renews the argumentative methods, literary style, structure and contents proposed, and post-Manu texts follow its model[6]. Unlike Manu, which generally presents a single authoritative voice on a specific topic, the authors of the *Dharmasūtra*s instead report the scholarly debate of their times, thus not establishing a norm. In its treatment, the *Mānavadharmaśāstra* makes a caesura of the elements discussed by the *Dharmasūtra*s, choosing which to include and which to exclude (in particular, its primary source for *dharma* issues is the *Gautamadharmasūtra*)[7]. The passages of the *Dharmasūtra*s remain significant for reconstructing the (pre-)history of many legal institutions (codified in later centuries) and the relevant legalistic reflection[8]. However,

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Author's note: All translations from Sanskrit are my own unless stated otherwise. I am grateful to Diletta Falqui for reviewing a draft of this article and to the peer reviewers whose insightful suggestions and corrections have greatly improved the work. Any remaining errors are, of course, my responsibility.

[1] The *Dharmasūtra*s include not only those authored by Āpastamba and Gautama but also those by Baudhāyana and Vasiṣṭha. These were composed between the third century BCE and the first century CE: specifically, the *Āpastambadharmasūtra* between the third and early second centuries BCE; the *Gautamadharmasūtra* between the late second and early first centuries BCE; the *Baudhāyanadharmasūtra* (at least the first two parts, called *praśna*s) between the mid-first century BCE and early first century CE; and the *Vasiṣṭhadharmasūtra* from the early to late first century CE. See Olivelle (2000: 1-18, 20, 116, 191, 346) for a general overview of the works. See Olivelle (2018a: 21) for the current dating proposals.

[2] The *Yājñavalkyasmṛti* is dated between the late fourth and early fifth centuries BCE; the *Nāradasmṛti* is probably later, attributed to the fifth or sixth century CE; finally, the *Viṣṇusmṛti* is placed between the sixth and eighth centuries CE. For a general overview of the works, see Lariviere (2003: 1-21); Olivelle (2009: 1-38; 2019: vii-xxxvii). See Olivelle (2018a: 27-28; 2019: xiv-xv) for the current dating proposals.

[3] The issue of the *Smṛti*s that have not been handed down from manuscripts (and the original form of which has been lost) is quite elaborate. Since this is not the focus of this paper, I will not dwell on it, especially in the methodology used to reconstruct their text.

[4] For the development of the treatment of judicial procedure in the Dharmaśāstra, see Kane (1962-1975, 3: 242-824); Patkar (1978); Olivelle and McClish (2015); Olivelle (2018b); McClish (2018).

[5] The *Mānavadharmaśāstra* is dated to the mid-second century BCE. For an overview of the work, see Olivelle (2005a: 3-70). For the current dating proposal, see Olivelle (2018a: 23-25).

[6] See Olivelle (2018a: 23-26).

[7] See Olivelle (2005a: 44-46, 2005b).

[8] A notable instance where the analysis of *Dharmasūtra* passages proves significant is in the context of marriage by bride price (*śulka*). This practice, prevalent during the Vedic times, generally faced condemnation in the post-Vedic era. However, while Āpastamba condemns this form of marriage (ĀpDh 2.13.10-11), Vasiṣṭha permits it (VDh 1.35-37). Vasiṣṭha's position, later discarded by Manu (who adopted

given their antiquity and composition in aphoristic prose (*sūtra*), some can be particularly cryptic for modern scholarship. Furthermore, even Dharmaśāstra commentators sometimes provide conflicting interpretations, perhaps due to the many centuries that intervene between them and the root texts on which they comment and due to the development of the Dharmaśāstra tradition leading to a 'flattening' of the nuances of meaning of the earlier texts.

In alignment with the overarching theme of this special issue, this brief paper aims to analyse a passage from the *Gautamadharmasūtra*, i.e., GDh 13.12-13. Within the section dedicated to witnesses, the text references that, according to some, one may resort to a *śapatha* to ascertain the truthfulness of statements (*satyakarman*) (see Section 2). This passage – particularly the word *śapatha* (commonly interpreted as 'curse' or 'oath') – has been subject to varied interpretations by both Dharmaśāstra commentators (namely Maskarin and Haradatta)[9] and modern scholars (see Section 3.1 and 3.2). However, a comparison with some parallels from other Dharmaśāstra root texts and legal digests may offer insights into the correct interpretation (see Section 3.3).

2. The ambiguous passage: *Gautamadharmasūtra* 13.12-13

As noted previously (see Section 1), the *Gautamadharmasūtra* passage with ambiguous interpretation appears in the chapter on witnesses (*sākṣin*), whose testimony is considered a means of judicial proof (*pramāṇa*).

I will briefly overview the different means of judicial proof in the Dharmaśāstra. In later texts, evidence is categorised into two principal types: human evidence and divine evidence[10]. Human evidence encompasses witness testimony (Skt. *sākṣin*), written documents (Skt. *lekhya*, *likhita*), and possession (Skt. *bhukti*, *bhoga*). Testimonial evidence was considered paramount in pre-Gupta Dharmaśāstra texts, whereas documents gained prominence in Gupta and especially post-Gupta jurisprudence. Indeed, the first extensive technical discussion on documents is found in the *Yājñavalkyasmṛti*[11]. In the early Dharmaśāstra, the witness testimony was indeed the sole means of proof discussed across all four *Dharmasūtra*s (ĀpDh 2.29.7-10, GDh 13, BDh 1.19.7-16, VDh 16.27-37), with Gautama's work being particularly notable for its breadth and legal insight. Of the other types of human evidence, Vasiṣṭha (the youngest of the four) mentions all three as means for establishing property claims (VDh 16.10) but does not discuss documentary evidence or possession, either in this section or elsewhere. On the other hand, divine evidence includes ordeals (Skt. *divya*) and forensic oaths (Skt. *śapatha*). Like human evidence, divine means of proof in the judicial procedure gradually

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Āpastamba's view), adds to the elements that point to an only apparent condemnation of this type of marriage. For further details on this subject, see Giudice (2024).

[9] There are only two surviving commentaries on the *Gautamadharmasūtra*, i.e., those of Maskarin and Haradatta. The latter also authored a commentary on the *Āpastambadharmasūtra*. Maskarin can be placed in the tenth century CE and Haradatta between the twelfth and thirteenth centuries CE. According to Olivelle (2000: 20, 116), Haradatta's commentary on Gautama does not measure up to his commentary on Āpastamba, and it is possible that it is not the same Haradatta who composed it. Cf. also Kane (1962-1975, 1: 742-749).

[10] For an overview of the judicial evidence in the Dharmaśāstra, see Thakur (1933); Kane (1962-1975, 3: 247-378); Rocher (2012: 361-393).

[11] See Olivelle (2018b: 295).

developed over the centuries[12]. However, a distinction must be made between the development of these two types of divine evidence (i.e., ordeals and forensic oaths) within the Dharmaśāstra. Concerning ordeals, aside from a brief reference in Manu's text (MDh 8.114-116), the first detailed treatment of the ordeal procedure (which identifies five ordeals: scale, fire, water, poison, and sacred water) is found in the *Yājñavalkyasmṛti* (YSm 2.98-117). Over time, the number of ordeals increased to nine (adding rice grains, red-hot gold, the ploughshare and drawing lots), and their procedure became increasingly complex. Post-Gupta legal texts devoted significant attention to ordeals, with extensive and detailed chapters on the subject (NSm 20, ViSm 9-14, BSm 8, KSm 411-461, PiSm 28-189). In contrast, forensic oaths received considerably less emphasis. After the brief description of forensic oaths found in Manu (MDh 8.109-113), Yājñavalkya does not elaborate on them, and later Dharmaśāstra works devote minimal space to the discussion of forensic oaths, which, in many cases, are treated as the 'light counterpart' of ordeals (NSm 1.221-222, 20.1-4, ViSm 9.5-17, BSm 8.46, KSm 462)[13].

Turning back to Gautama's ambiguous *sūtra*s, the section in which they are included touches on these main points: when to resort to witnesses (GDh 13.1), the number and qualities of witnesses (GDh 13.2-4), modalities of witnesses' testimony and relevant duties (GDh 13.5-13), false testimony (GDh 13.14-25), summoning of witnesses (GDh 13.26-30), and the necessity of speaking the truth (GDh 13.31). In particular, the subsection containing the two *sūtra*s discussed in this paper examines the modalities of testimony from various perspectives. Here, some practical information on how to question witnesses and the circumstances under which objections may be raised is provided. However, there is also a discussion of the otherwordly consequences of witnesses speaking truthfully or lying and on whom the blame falls if the *dharma* is obstructed in the lawsuit (GDh 13.5-11)[14]. This subsection is concluded by the two *sūtra*s under scrutiny (GDh 13.12-13). Below, I provide their text and a very neutral translation that allows us to develop the argument in the following paragraph:

> *śapathenaike satyakarma* ‖ 12 ‖ *tad devarājabrāhmaṇasaṃsadi syād abrāhmaṇānām* ‖ 13 ‖

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[12] For discussions on ordeals in Indian judicial procedure, see Thakur (1933: 264-268); Kane (1962-1975, 3: 361-378); Derrett (1978); Lariviere (1981: 7-51); Pendse (1985: 1-185, 197-240); Yelle (2001: 629, 631, 2002, 2010: 183-187, 2013: 43-46); Rocher (2012: 389-393), Wiese (2016); Olivelle (2018b: 290, 295-296). On the other hand, regarding forensic oaths in the Dharmaśāstra, see Kane (1962-1975, 3: 357-360); Lariviere (1981: 51-52); Pendse (1985: 186-196). Notable studies on Indian oaths outside judicial procedure include Hopkins (1932); Lüders (1959: 655-674); Klein-Terrada (1980: 4-59); Hara (1987, 1988, 1991, 1991-1992); Yagi (2001, 2001-2002, 2002).

[13] For the purposes of this article, the brief overview provided here on the development of ordeal and forensic oath procedures in the *Dharmaśāstra* is sufficient.

[14] GDh 13.5-11: «*nāsamavetā apṛṣṭāḥ prabrūyuḥ* ‖ 5 ‖ *avacane ca doṣiṇaḥ syuḥ* ‖ 6 ‖ *svargaḥ satyavacane viparyaye narakaḥ* ‖ 7 ‖ *anibaddhair api vaktavyam* ‖ 8 ‖ *na pīḍākṛte nirbandhaḥ* ‖ 9 ‖ *pramādokte ca* ‖ 10 ‖ *sākṣisabhyarājakartṛṣu doṣo dharmatantrapīḍāyām* ‖ 11 ‖» '[Witnesses] should not speak unless they have gathered and been asked [to do so]. Should they not speak, they will be guilty of an offence. Should they speak the truth, [there would be] heaven for them; should they do the opposite, [there would be] hell. Even those not [initially] listed as witnesses may have to testify. No objection [may be raised] against [witnesses] in the case of [a lawsuit] on the use of violence and in the case of careless statements. Blame falls on the witnesses, the assessors, the king, and the perpetrator in the case of obstruction of the course of *dharma*'.

'Some [maintain] that the ascertainment of the truth [occurs] through a *śapatha*. For those who are not Brāhmaṇas, it should take place in an assembly of deities[15], the king and Brāhmaṇas'.

3. Commentarial and scholarly interpretations of the passage

Before analysing the various interpretations of GDh 13.12-13, it is worth noting that the textual issue is not philological but hermeneutical. Indeed, Olivelle (2000) does not report variant readings or make critical remarks on the two *sūtra*s. The challenge lies entirely in interpreting *śapathena*, a masculine singular instrumental from *śapatha-*.

Out of the context of the *Gautamadharmasūtra* passage, *śapatha-* (occurring 121 times in Vedic and Classical Sanskrit texts)[16] is explained in Pāṇinian terms as a *kṛt* derivative stem (namely, a primary derivative) formed with the *uṇādi* affix *atha* applied to the verbal base *śap-* (occurring 470 times)[17]. The rule of Pāṇini involved is A 3.3.1[18], and the *uṇādi* affix at stake is taught by US 3.112-113[19]. Based on the occurrences of *śap-* and its collocations, Yagi (2002) records three primary meanings of this verbal base: i) *śap¹-* 'to curse'; ii) *śap²-* 'to swear' = *ātmānam* (acc. masc. sing. of *ātman-* 'oneself') + *śap¹-* + *yadi...* ('if', followed by a given condition), i.e., 'to curse oneself on a given condition'; iii) *śap³-* 'to swear/declare (to someone that A is B) [by an oath (*sap²atha*)]', i.e., 'to swear to someone by cursing oneself on a given condition'. In this connection, the *kṛt* derivative stem *śapatha* is formed from *śap²-* with the *uṇādi* affix *atha* to denote 'oath'.

However, in the context of the *Gautamadharmasūtra* passage under examination, and more broadly in this early stage of Dharmaśāstra, interpreting this term may lead to differing interpretations, as seen among both medieval commentators (Section 3.1) and contemporary scholars (Section 3.2).

3.1. The diverging interpretations of Maskarin and Haradatta on GDh 13.12-13

Starting with the commentators, Maskarin, the earliest in chronological order (based on the current dating proposal)[20], interprets the ambiguous *śapathena* as referring to the

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[15] I emphasise that the deities in the assembly were represented by images (as Maskarin explicitly stated while commenting on *deva* in this compound). These divine images certainly had a totemic value, representing, in fact, the deities themselves. The mention of a *satyakarman* in front of an assembly composed of deities, the king and Brāhmaṇas, accurately depicts the two spheres of judgement involved, the human and the divine, and the solemnity inherent in this act. Given these elements, I prefer to translate *deva* literally as 'deities' without an eventual integration such as '[images of] deities'.

[16] This data was found through corpus research with the DCS: see <http://www.sanskrit-linguistics.org/dcs/index.php?contents=lemma&IDWord=116626> (accessed 11/02/2025).

[17] This data was found through corpus research with the DCS: see <http://www.sanskrit-linguistics.org/dcs/index.php?contents=lemma&IDWord=158124> (accessed 11/02/2025).

[18] A 3.3.1: *uṇādayo bahulam* [*dhātoḥ* 3.1.91 *kṛt* 3.1.93 *vartamāne* 3.2.123] «[A *kṛt* affix] part of the list beginning with *uṆ* variously [occurs after a verbal base to denote the present tense]».

[19] US 3.112-113: «*śīṁśapirugamivañcajīvipraṇibhyo 'thaḥ || saptabhyo 'thaḥ syāt* […] *śapathaḥ* | […]» '[The *uṇādi* affix] *atha* [occurs] after [the verbal bases] *śīṄ* ('to sleep'), *śap-* ('to swear'), *ru-* ('to roar'), *gam-* ('to go'), *vañc-* ('to go crookedly'), *jīv-* ('to live'), and *prāṇ-* ('to breathe'). After these seven verbs, [the *uṇādi* affix] *atha* should occur, [as for example] […] *śapatha-* ('oath') […]'.

[20] See footnote 9.

administration of a divine means of proof. Here is an excerpt of Maskarin's comment on the first *sūtra* (Mas *ad* GDh 13.13, according to his numbering = GDh 13.12)[21]:

> *yadā tu sākṣyādipramāṇāntarapratyastamayas tadā śapathena kośādinaike satyakarma satyavyavasthāpanam icchanti | […]*
>
> 'However, when there is the unavailability of another means of proof, such as witnesses or the like (i.e., human means of proof), then some maintain that the *satyakarman*, i.e., establishing the truth, [takes place] by *śapatha*, i.e., by the sacred water and the like'[22].

According to Maskarin, this *sūtra* would refer to the classic situation found in almost all later Dharmaśāstra texts in which, in the absence of witnesses or, more generally, human evidence (even inferring documents and possession), one should proceed with a divine means of proof (in most cases, an ordeal)[23]. The reference to divine evidence is here made through the compound *kośādi* ('sacred water and the like'), with which Maskarin paraphrases *śapatha*, not used in its literal meaning of 'oath'. Broadly speaking, the sacred water procedure consists of drinking the water with which images of the deities have been bathed: if, after a certain period of time, no misfortune happens to the undergoer, he is innocent[24]. Given that *kośa* itself is an ordeal, i.e., that of the sacred water, this compound may be interpreted as only referring to ordeals, even considering the use of *ādi* as the right-hand constituent. However, it should be remarked that Dharmaśāstra commentators usually use the compounds *dhaṭādi* ('scale and the like') or *dhaṭakośādi* ('scale, sacred water, and the like') to denote the group of the first five ordeals, i.e., scale, fire, water, poison, and sacred water; the compound *kośādi* is much less used to refer to the ordeals. It is possible that, by this compound, Maskarin also intended to refer to forensic oaths besides ordeals. Indeed, as demonstrated by Lariviere (1976), the Dharmaśāstra authors treat *kośa* as a divine means of proof somewhere between an ordeal and a forensic oath: this is represented as an ordeal in theory but resembles a forensic oath in practice[25]. In any case, whether he intended to refer only to ordeals or even to forensic oaths, Maskarin interprets this *sūtra* as teaching that one can use a divine means of proof to establish the truth when witnesses and the like are unavailable.

Haradatta's interpretation of the ambiguous *śapathena* differs significantly from Maskarin's. This author thinks there is no reference to divine means of proof but an oath

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[21] The numbering of the edition of the *Gautamadharmasūtra* with Maskarin's commentary differs from the critical edition because, in chapter 13, the latter presents GDh 13.2 split into two different *sūtra*s.

[22] For this paper's purposes, the rest of the commentary, rather hermeneutically complex, does not add relevant information to what is stated in this first portion.

[23] See MDh 8.109, YSm 2.22, NSm 20.1, BSm 8.1cd, 8.47, KSm 217, PiSm 29. This principle is also found in the "Dharmaśāstra-like" sections on ordeals of two Purāṇic texts: see VDhP 3.328.1, KuKh 44.3.

[24] See YSm 2.116-117, NSm 20.41-45, VSm 14, BSm 8.65-68, PiSm 157-162.

[25] A further element in favour is that, in the next section of the commentary, Maskarin quotes, with a *pratīka*, ṚV 7.104.15 (although the printed edition of Maskarin's text presents a textual variant that makes little sense). This Ṛgvedic verse is associated by Indian tradition (including the Dharmaśāstra: see MDh 8.110 and Medhātithi's comment on it) to an episode in the life of the sage Vasiṣṭha, namely the latter's oath against false accusation by Viśvāmitra (see Olivelle 2005a: 331) of being a sorcerer who had devoured his own sons. This verse's original meaning and context do not align with its common interpretation within the tradition (see Jamison and Brereton 2014, 2: 1015-1016). Nevertheless, this is one of the mythological episodes often referred to by the Dharmaśāstra authors as a foundation for resorting to divine evidence in judicial procedure.

to establish the veracity of witnesses. Here is Haradatta's comment on the first *sūtra* (Har *ad* GDh 13.12):

> *yatra sākṣiṣu tathā viśvāso na bhavati tatra śapathena satyakarma śapathaṃ kārayitvā satyaṃ vācanīyam ity eke manyante ||*
> 'When there is no confidence in the witnesses, then the ascertainment of the truth [should be done] by an oath, i.e., after having [the witnesses] swear an oath, one should make [the witnesses] speak the truth – so some believe'.

According to Haradatta, if witnesses are doubted to be truthful, they should be made to swear an oath to ensure the veracity of their testimony and then speak the truth. In other words, witnesses must testify under oath.

Finally, the two commentators' interpretations of the second *sūtra* are influenced by their understanding of the first. For Maskarin, the *śapatha* (understood as an ordeal) should be conducted in front of images of the gods, the king (as the authority trying the lawsuit) and Brāhmaṇas (as the assessors). In contrast, Haradatta holds that the oath ensuring the truthfulness of the testimony should be taken by witnesses before the same assembly[26].

In conclusion, it can be argued that, although distant from each other, both commentators' positions – primarily based on the interpretation of *śapatha* in GDh 13.12 – are significant enough to be reflected in the scholarship on this passage (see Section 3.2).

3.2. Scholarly interpretations of GDh 13.12-13

This passage from the *Gautamadharmasūtra* has also elicited varying opinions among scholars concerning its interpretation, particularly of the word-form *śapathena*. There are two main interpretations of GDh 13.12-13. According to the first, which aligns with Haradatta's comment on the two *sūtra*s, the witnesses should swear a preliminary oath before their testimony. This is the interpretation of Bühler (1879-1882, 1: 244), Pāṇḍeya (1966: 135), Hazra (1968: 28) and Olivelle (2000: 151, 153), which I quote as an instance:

> According to some, the witnesses are to be placed under oath to speak the truth; if they are not Brahmins, the oath should be administered in the presence of divine images, the king, and Brahmins. (tr. Olivelle 2000: 151, 153)

The second interpretation, put forth by Lariviere (1981: 1-7), is connected to a broader hypothesis concerning divine means of proof in the *Dharmasūtra*s. The scholar argues that, in this early textual layer of the Dharmaśāstra, it is not possible to differentiate between forensic oaths and ordeals as the two distinct procedures of *divya* and *śapatha* known from later Dharmaśāstra texts do not yet exist. In the *Dharmasūtra*s, specifically those of Āpastamba and Gautama, as the other two do not present any passage on this subject, there appears to be a single procedure of divine evidence. Āpastamba (ĀpDh

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[26] A final noteworthy point underlined by Haradatta (which seems not to be emphasised in Maskarin) is that this preliminary oath is assigned only to Kṣatriyas, Vaiśyas, and Śūdras: Brāhmaṇas are exempt from this. Here is the relevant passage (Har *ad* GDh 13.13): «[…] *abrāhmaṇānām iti vacanād brāhmaṇānāṃ śapathakarma na bhavati |* […]» 'Due to the expression *abrāhmaṇānām* ('in the case of non-Brāhmaṇas'), in the case of Brāhmaṇas, the ascertainment by oath does not take place'. Such an interpretation is indeed plausible.

2.11.3, 2.29.6) and Gautama (the passage under analysis), respectively referring to this procedure as *daiva* and *śapatha*, seem to use these terms with the more general sense of *daivikaprāmaṇa* ('divine means of proof'). Only from the *Mānavadharmaśāstra* onward do two procedures appear to be somewhat distinctly described (MDh 8.109-116). Finally, a definite distinction between the two procedures – and consequently terms denoting them, i.e., *divya* and *śapatha* – is established only from the *Yājñavalkyasmṛti*, which contains a long section on ordeals, and *Nāradasmṛti*, also discussing forensic oaths (see Section 2). Based on this hypothesis, Lariviere translated Gautama's passages as follows:

> Some say that veracity is established by divine means. For those other than [B]rāhmaṇas it should be done in the presence of the gods, the king and [B]rāhmaṇas.
> (tr. Lariviere 1981: 1-2)

This view is also supported – but only regarding the *Āpastambadharmasūtra* passages mentioned above – by Hazra (1968: 29-38) and Lingat (1973: 93). To my knowledge, it remains unique for the *Gautamadharmasūtra* passage under examination[27].

These two scholarly interpretations of the passage are based on different elements. The interpretation followed by most scholars, which assigns to *śapatha* its literal meaning of 'oath', is evidently based on Haradatta's reading. In contrast, Lariviere's interpretation is linked to his broader theory on the evolution of ordeals and forensic oaths. This view partially aligns with Maskarin's reading, which attributes a non-literal meaning to *śapatha*. However, while for the medieval commentator, the term refers to the ordeals of *kośa* and the rest, Lariviere suggests that it represents a generic divine means of proof, the only form available at the chronological peak of the *Dharmasūtra*s.

3.3. Looking for textual parallels

This final paragraph revisits the various commentarial and scholarly hypotheses discussed earlier and suggests textual parallels that could help clarify the correct interpretation.

The textual evidence of the early Dharmaśāstra texts up to the *Yājñavalkyasmṛti* undermines Maskarin's interpretation as presented. At the time of the *Gautamadharmasūtra*, ordeals were not yet a standardised legal institution as in later times. Moreover, there is no trace in the sources of the *kośa* ordeal before Yājñavalkya's text (YSm 2.116-117).

Before discussing Lariviere's view, it is essential to consider certain points. In the Vedic corpus, there are episodes where oaths of truth are taken (e.g., ṚV 7.104.15-16) and instances where ordeal-related phenomena, specifically involving fire and water, resembling later ordeals are performed (e.g., in two Sāmavedic *Brāhmaṇa*s: PB 14.6.6 and JB 3.325)[28]. Indeed, the Dharmaśāstra authors cite some of these episodes as mythological foundations for forensic ordeals and oaths (e.g., MDh 8.110). Undoubtedly, in these Vedic passages, one cannot speak of actual procedures like those regulated in the Dharmaśāstra (still undergoing their own development over the centuries: see Section 2);

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[27] Other scholars who have dealt with ordeals and forensic oaths do not devote space to the discussion of GDh 13.12-13 (cf. Kane 1962-1975, 3: 357-378) or limit themselves to describing the content of the passage without taking a significant position on its interpretation (cf. Pendse 1985: 37, 186).

[28] Other episodes of the same type are also found later in the Sanskrit epics, such as that of the theft of the lotus stalks, narrated in two versions in the thirteenth book of the *Mahābhārata*, i.e., MBh 13.95.50-86 and 13.96. For an in-depth study on this episode, see Klein-Terrada (1980), who analysed not only the *Mahābhārata* versions but also those of *Jātaka*s and *Purāṇa*s.

at least, that is what the sources suggest. This context highlights the significance of Lariviere's hypothesis (1981: 1-7), which I find plausible, especially regarding the passages from the *Āpastambadharmasūtra*, as argued by other scholars (see Section 3.2). Concerning his interpretation of GDh 13.12-13, the broader context in which the two *sūtra*s are found, along with the various textual parallels favouring Haradatta's view, indicates that this passage pertains to a different situation unrelated to divine evidence. Thus, while Lariviere's perspective is valid for Āpastamba, it should be set aside when examining this passage from Gautama.

In fact, Haradatta's view, which most scholars follow, is supported by several textual parallels, making it more compelling than the alternatives. One passage that supports this interpretation is found in Kauṭilya's *Arthaśāstra*[29] and alludes to testimony under oath (AŚ 3.20.17):

> *śapathavākyānuyogam anisṛṣṭaṃ kurvataḥ yuktakarma cāyuktasya kṣudrapaśuvṛṣāṇāṃ puṃstvopaghātino dāsyā garbham auṣadhena pātayataś ca pūrvaḥ sāhasadaṇḍaḥ ||*
> 'For someone who carries out an interrogation by administering an oath without being authori[s]ed to do so, who performs an official's duties without being appointed as an official, who castrates small farm animals used for stud, or who causes an abortion of a female slave through medication, the punishment is the lowest seizure fine'. (tr. Olivelle 2013: 221)

Here, punishment is prescribed for, among others, a man who carries out an interrogation under oath (*śapathavākyānuyoga*), which has not been authorised (*anisṛṣṭa*) by the king. Since this is the third book of the *Arthaśāstra* (precisely devoted to justice and legal procedure), the reference is probably to the questioning of witnesses.

As for Dharmaśāstra parallels, all the texts focus on the need for the witness to speak truthfully when testifying (e.g., MDh 8.61, 8.82, 8.87). However, certain passages explicitly refer to witnesses testifying, under various circumstances, after taking an oath:

> *grāmeyakakulānāṃ tu samakṣaṃ sīmni sākṣiṇaḥ |*
> *praṣṭavyāḥ sīmaliṅgāni tayoś caiva vivādinoḥ ||*
> *te pṛṣṭās tu yathā brūyuḥ samastāḥ sīmni niścayam |*
> *nibadhīyāt tathā sīmāṃ sarvāṃs tāṃś caiva nāmataḥ ||*
> *śirobhis te gṛhītvorvīṃ sragviṇo raktavāsasaḥ |*
> *sukṛtaiḥ śāpitāḥ svaiḥ svair nayeyus te samañjasam ||*
> *yathoktena nayantas te pūyante satyasākṣiṇaḥ |*
> *viparītaṃ nayantas tu dāpyāḥ syur dviśataṃ damam ||* (MDh 8.254-257)
> 'Witnesses to a boundary should be questioned about the boundary markers in the presence of the village communities and the two litigants. In accordance with the unanimous decision regarding the boundary they render upon questioning, he should make a record of the boundary, as well as of all their names. Putting earth on their heads, wearing garlands and red clothes, and being made to swear each by his good deeds, they shall render a truthful decision. When they render a decision in the above

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[29] For the articulated compositional history of the *Arthaśāstra*, I refer to McClish's hypothesis (2019: 28-154). According to McClish, an original work (which he refers to as *Daṇḍanīti*) was initially written by an anonymous expert on government around the first century BCE, incorporating both earlier references and unique content. In the third century CE, it underwent a significant redaction with substantial new material by another author identifying himself as 'Kauṭilya'. The text was thus renamed as the *Arthaśāstra* of Kauṭilya. Eventually, during the Gupta period (likely by the fourth century CE), the *Arthaśāstra* was attributed to Cāṇakya, the legendary minister of Candragupta Maurya.

manner, they remain untainted as truthful witnesses; but when they render a contrary decision, they should be fined 200'. (tr. Olivelle 2005a: 181)

āhūya sākṣiṇaḥ pṛcchen niyamya śapathair bhṛśam |
samastān viditācārān vijñātārthān pṛthak pṛthak || (NSm 1.180 = KSm 345)[30]
'After summoning the witnesses and firmly binding them by oath, one should interrogate [them] one by one, all of them being of renowned good conduct and having knowledge of the matter [in dispute]'.

sākṣiṇaś cāhūyādityodaye kṛtaśapathān pṛcchet || (ViSm 8.19)
'And, having summoned the witnesses at sunrise, one should interrogate [them] after they have taken an oath'.

saṃnidhau caṇḍikāyāś ca vādidvayasamīpataḥ |
raktacandanadigdhāṅgān pṛcchec chapathapūrvakam ||
(cited in VyNi 115 and attributed to Pitāmaha)[31]
'In the presence of [an image of] Durgā and near the two litigants, one should interrogate [witnesses] whose limbs are anointed with red sandalwood after [making them swear] an oath'.

These passages show that, even in legal texts after Gautama's, witnesses were required to swear an oath before giving their testimony, thus confirming the validity of Haradatta's interpretation of GDh 13.12-13. Given this evidence, I can conclude that, in Indian judicial procedure, at least from the time of the *Gautamadharmasūtra* onward, such an oath – due to its inherent sacredness[32] – sealed the truthfulness of a witness's testimony[33].

4. Conclusion

This article has highlighted a case of divergent interpretations concerning a passage of a root text of the Dharmaśāstra. The passage in question is *Gautamadharmasūtra* 13.12-13, with the central focus on interpreting the term *śapatha* (lit. 'oath'). This is understood

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[30] This verse is attributed to Kātyāyana by Vijñāneśvara (Vij *ad* YSm 2.73ab) and is present in Kane's reconstruction (1933: 45) of the *Kātyāyanasmṛti.*

[31] This verse, attributed to Pitāmaha only by Varadarāja (who is also the only one quoting it), is not found in Scriba's reconstruction (1902) of the *Pitāmahasmṛti.*

[32] The original sacredness of oaths is explained from a historical-religious perspective by Agamben (2008), who defines oaths as 'the sacrament of language'. According to this scholar, in ancient civilisations, oaths possessed both a legal and religious significance, which were ontologically co-present and originated from a phase when the spheres of religion and law were not distinct, and language embodied divinity. As a result, swearing was tantamount to performatively affirming the truth. This original 'sacred' value of oaths can also be applied to Indian oaths, especially those represented in the episodes of the Vedic and epic texts mentioned above (see also footnote 28). Of course, in later times, this 'inviolable sacredness' of Indian oaths was gradually lost to the extent that some passages in the Dharmaśāstra teach that there are several occasions when it is permissible to perjure oneself (see, e.g., MDh 8.112).

[33] As a final note, in today's legal system of India, witnesses must also swear an oath in lawsuits according to *The Oaths Act* enacted on 26 December 1969. In particular, Section 4 of *The Oaths Act* states: «Oaths or affirmations to be made by witnesses, interpreters and jurors. – [...] Oaths or affirmations shall be made by [...] all witnesses, that is to say, all persons who may lawfully be examined, or give, or be required to give, evidence by or before any Court or person having by law or consent of parties authority to examine such persons or to receive evidence». For an overview of the present-day legal system of India, see Francavilla (2011); Acquarone (2015); Singh and Kumar (2019).

differently by the two medieval Dharmaśāstra commentators on Gautama's text: Maskarin and Haradatta. Maskarin interprets *śapatha* as referring to the administration of ordeals (precisely mentioning that of sacred water and the rest: *kośādi*) to settle the lawsuit. Haradatta understands it as an oath that witnesses must take before giving testimony. Modern scholars also differ in their interpretations of *śapatha* in GDh 13.12-13. The majority, including Bühler (1879-1882, 1: 244), Pāṇḍeya (1966: 135), and Olivelle (2000: 151, 153), align with Haradatta's view. In contrast, Lariviere (1981: 1-7) suggests that *śapatha* relates to a single divine means of proof (a generic *daivikapramāṇa*), which, at least up to the *Mānavadharmaśāstra*, would not include a distinction between ordeals and forensic oaths as in later Dharmaśāstra works. However, this hypothesis is not supported by the established use of *śapatha* to mean 'oath' and *śap-* to mean 'to curse'/'to swear'/'to declare (by oath)' in the Vedic corpus. Maskarin's reading is further weakened by the development of ordeals in the Dharmaśāstra because there is no attestation of the sacred water ordeal, as well as those of scale and poison (which are hinted at through the compound *kośādi*), before the *Yājñavalkyasmṛti*. Haradatta's interpretation, favoured by most scholars, is strengthened by several textual parallels (AŚ 3.20.17, MDh 8.254-257, NSm 1.180 = KSm 345, ViSm 8.19, a verse attributed to Pitāmaha by Varadarāja). These parallels collectively reinforce the conclusion that Haradatta's reading is more accurate.

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Abbreviations

A   Pāṇini's *Aṣṭādhyāyī*. Ed. and tr. Sharma (1987-2003).
ĀpDh   *Āpastambadharmasūtra*. Ed. and tr. Olivelle (2000).
BDh   *Baudhāyanadharmasūtra* Ed. and tr. Olivelle (2000).
BSm   *Vyavahārakāṇḍa* of the *Bṛhaspatismṛti*. Ed. (reconstr.) Aiyangar (1941).
GDh   *Gautamadharmasūtra*. Ed. and tr. Olivelle (2000).
Har   Haradatta's *Mitākṣarā* on the *Gautamadharmasūtra*. Ed. Āpṭe (1931).
JB   *Jaiminīyabrāhmaṇa*. Ed. and tr. Ranade (2019).
KSm   *Kātyāyanasmṛti*. Ed. (reconstr.) and tr. Kane (1933).
KuKh   *Kumārikākhaṇḍa* of the *Māheśvarakhaṇḍa* (part of the printed *Skandapurāṇa*). Ed. Kṣemarāja Śrīkṛṣṇadāsa (1910).
Mas   Maskarin's *Gautamasūtrabhāṣya* on the *Gautamadharmasūtra*. Ed. Srinivasacharya (1917).
MBh   *Mahābhārata*. Ed. Sukthankar, Belvalkar, and Vaidya (1933-1971).
MDh   *Mānavadharmaśāstra*. Ed. and tr. Olivelle (2005a).
NSm   *Nāradasmṛti*. Ed. and tr. Lariviere (2003).
PB   *Pañcaviṃśabrāhmaṇa*. Ed. Śāstrī C. and Śāstrī P. (1935-1936). Tr. Caland (1931).
PiSm   *Pitāmahasmṛti*. Ed. (reconstr.) and tr. Scriba (1902).
ṚV   *Ṛgvedasaṃhitā*. Ed. Aufrecht (1877). Tr. Jamison and Brereton (2014).
US   *Uṇādisūtra*. Ed. Böhtlingk (1844).
VDh   *Vasiṣṭhadharmasūtra*. Ed. and tr. Olivelle (2000).
VDhP   *Viṣṇudharmottarapurāṇa*. Ed. Kṣemarāja Śrīkṛṣṇadāsa (1912).

Vij   Vijñaneśvara's *Mitākṣarā* on the *Yājñavalkyasmṛti*. Ed. Panśikār (1936).
ViSm   *Viṣṇusmṛti*. Ed. and tr. Olivelle (2009).
VyNi   Varadarāja's *Vyavahāranirṇaya*. Ed. Aiyangar and Aiyangar (1942).
YSm   *Yājñavalkyasmṛti*. Ed. Olivelle (2020). Tr. Olivelle (2019).

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