

Historically Repositioning Devaṅṅabhaṭṭa's *bhāṣādi-* and *dharmādivyavahāracatuṣpādatva* in Medieval Sanskrit Jurisprudence

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1 Introduction

The traditional classification of Hindu legal procedure into “four feet” offers us suggestive information for the history of Sanskrit jurisprudence. This paper will review how Devaṅṅabhaṭṭa, the thirteenth century jurist,¹ depicts *vyavahāracatuṣpādatva* (lit. “legal procedure’s having four feet,” or, quadrupedness). In recent years, some researchers have questioned the general applicability of the account on this concept given by, for example, Pandurang Vaman KANE and Robert LINGAT. Avoiding the overgeneralization and concentrating on Devaṅṅabhaṭṭa’s narrative will yield a more reliable historical overview.

Nāradaśmṛti mātṛkā 1.8; 10–11 informs that *vyavahāra* has four feet, i.e., *dharma*, *vyavahāra*, *caritra*, and *rājasāsana*.² Later commentators and theorists have coined this concept—legal procedure’s having four feet such as *dharma* and so on—as “*dharmādivyavahāracatuṣpādatva*.”³ Confusingly, there exist other *śmṛtis* that refer to a different series of *vyavahāracatuṣpādatva*. They inform *bhāṣādivyavahāracatuṣpādatva*—legal procedure’s having four feet, i.e., *bhāṣā*, *uttara*, *kriyā*, *nirṇaya*—from which we can know how the trials proceed. This fact gave medieval Hindu jurists a lot of room to formulate theories on the quadrupedness.

KANE [1962–1975: 3, 259–262] builds various *śmṛtis* and *dharmanibandhas* together to show that the four feet such as *dharma* are incorporated into *nirṇaya*—the last stage of *bhāṣādivyavahāracatuṣpādatva*. In other words, he supposes that *dharma* as a foot means in fact a verdict by *dharma*.⁴ Here, the four feet are regarded as means for reaching verdicts. OLIVELLE AND McCLISH [2015] argue the original meaning of quadrupedness attested in the *Kauṭīliya-Arthasāstra*: they try to supply the lack of historical perspective in the accounts given by previous researchers. Their attempt successfully suggests the origins of jurisprudence in ancient South Asia. A careful philological survey will similarly propose a solid foundation for future research.

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¹ For the dates of the activities of the theorists, I generally follow the chronology given by KANE [1962–1975]; see *op.cit.*, 1(2), 737–741, especially for Devaṅṅabhaṭṭa.

² *sa catuṣpāc catuṣṭhānāś catuṣṣādhana eva ca | ... || dharmāś ca vyavahāraś ca caritraṃ rājasāsanaṃ | catuṣpād vyavahāro ’yam uttaraḥ pūrvabādhaḥ || tatra satye sthito dharmo vyavahāras tu sākṣiṣu | caritraṃ pustakaraṇe rājājñāyāṃ tu śāsanaṃ.* (translated partly in p. 33 of this paper)

³ *pāda-* is a derivative of the strong stem of *pad-* (sg. Nom., *pād*; Ac. *pādam*), and *catuṣpad-* and *-pāda-* are synonyms. Some commentaries, e.g., *Mitākṣarā* adds *tva* to the strong stem, giving the word *catuṣpāttva-*.

⁴ KANE [1962–1975: 3, 259, fn. 336; 260] renders the four feet as “[d]harma and the other three are really the four feet of *nirṇaya* (final decision), ...,” saying, “[i]t has to be noted that the four (*dharma* &c.) mentioned in these verses [in the *Kauṭīliya-Arthasāstra*, etc.] are the means of arriving at a decision in a law-suit.” Also see LINGAT 1962; WATASE 1975.

Devanṇabhaṭṭa (ca. 1150–1225) gives one of the best material for exploring this subject. His work, the *Smṛticandrikā* (henceforth, *SmC*), is the most frequently referred to in the previous studies on this matter; and it is the oldest one that systematically illustrates the *vyavahāra*'s quadrupedness;⁵ and, finally, later works like *Parāśaramādhavīya* follow the general framework outlined by it.

About half a century ago, the Japanese Indologist WATASE Nobuyuki discussed the quadrupedness in some *dharmanibandhas*, concentrating mainly on the *SmC* (WATASE 1975). His study, however, also remains to be reexamined in that he pieced the information from some *nibandhas* together. Attempting to reconstruct Devanṇabhaṭṭa's thought on the quadrupedness could assist in 'recovering' the historicity of Sanskrit jurisprudence.

2 Devanṇabhaṭṭa's *Smṛticandrikā*, *vyavahārabhedāḥ* section

2.1 Constitution of the texts

Devanṇabhaṭṭa discusses judicial matters in the *vyavahārakāṇḍa* of the *SmC* together with other various Dharmaśāstric topics. In accord with convention, he starts with general rules of justice and then moves to substantive law, i.e., *vyavahārapada* like *ṛṇādāna* (lit. "non-payment of debts"). According to the edition, the part on general rules consists of forty-seven sections, among which the *vyavahārabhedāḥ* section mentions our concern—*vyavahāracatuṣpādatva*. In this section, Devanṇabhaṭṭa presents more than a dozen classifications of *vyavahāra*, with *dharmādivyavahāracatuṣpādatva* being the second and *bhāṣādivyavahāracatuṣpādatva* the last one. Hereafter, I review the latter first for making it easy to grasp how the trials proceed in Devanṇabhaṭṭa's stand.

2.2 *bhāṣādivyavahāracatuṣpādatva* (*SmC*, pp. 27ff.)

The subsection dealing with *bhāṣādivyavahāracatuṣpādatva* is concerned with the definition of the procedural stage called *pratyākalita* (see Table 1). I will focus on reproducing the process Devanṇabhaṭṭa assumes by putting together the two possible interpretations given on this word, while temporarily leaving aside what, he thinks, constitute quadrupedness.

0. <i>bhāṣādivyavahāracatuṣpādatva</i> , laid out
1. First interpretation, esp. of <i>pratyākalita</i>
2. Alternative interpretation
2.1. Alternative interpretation given
2.2. Related discussion, on the word <i>siddhi</i>
2.2.1. First view
2.2.2. Second view, by <i>anye</i>
2.3. <i>pādakrama</i> , or <i>pādas</i> ' order, in this interpretation

Table 1 Synopsis of the subsection on *bhāṣādivyavahāracatuṣpādatva*

⁵ Strictly speaking, the earliest extant text that explicitly interprets *dharmādivyavahāracatuṣpādatva* as meaning verdicts by *dharma*, etc., would be the *Kṛtyakalpataru* (*KKT*) by Bhaṭṭa Lakṣmīdhara, ca. 1125–1160. This text, however, is not fit for purpose because it contains little of the author's own commentary. See the *KKT*, *nirṇayaprakāraḥ* pp. 258–260; *nirṇayabalābalaḥ* pp. 261–262.

SmC, *vyavahārabhedāḥ* (pp. 27ff.; the original text in fns. 6 and 10)

[0. *bhāṣādivyavahāracatuṣpādatva*, laid out]

Also, he [i.e., Kātyāyana] himself shows the other classification, saying,

This [i.e., *vyavahāra*] is said to have four feet: *plaint*, *plea*, *deliberation* (*pratyākalita*), and *adducing of evidence*. (*KSm* 31)

[1. First interpretation, esp. of *pratyākalita*]

Deliberation means judges' and their companions' examination as to which of the two parties in the concerned case is fit to adduce evidence. [And this examination occurs] immediately after accepting the [defendant's] plea. Evidence, *kriyā*, means such as a document that allows us to know facts. Showing it constitutes the foot of [adducing] evidence. And, *deliberation* and *adducing of evidence* are the settling parts of legal procedure, the essence of which is a dispute. Therefore, these two [feet] are also included in the legal procedure. That is why [Kātyāyana] says that [*vyavahāra*] is said to have four feet[, which include *deliberation* and *adducing of evidence*, though they are not relevant to dispute]. For this very reason, the author of *Smṛtisamgraha* also says that the settling parts constitute the legal procedure, as follows:

People call it legal procedure, correctly deciding by relying on the statement [of *smṛtikāras*] when individuals have disputes about each other's property. (*DhK* 6)

[2. Alternative interpretation]

[2.1. Alternative interpretation given]

According to some (*kecit*), *deliberation* means the examination after the evidence has been adduced. And this removes doubt that the [valid] evidence does not exist and brings about a verdict of victory or defeat. In their opinion, [Kātyāyana] intended to show only the number of feet, not the order, since the foot of *deliberation* occurs [in his statement] as the third [before adducing evidence].

[2.2. Related discussion, on the word *siddhi*]

[2.2.1. First view]

Yājñavalkya states,

In its accomplishment, one will obtain *siddhi*. In the other case, the opposite. (*YSm* 2.8ab)

Here again, the word *siddhi* refers to the *deliberation* which brings about *siddhi*, i.e., success, not the determination of victory or defeat itself. Because, as it [i.e., the determination itself] also exists in the case of an *admissive plea*, inconsistency would arise with the following statement:

In the case of an *admissive plea*, [one should know that the legal procedure] has only two feet. (*BSm* 2.3d)

Hence, Yājñavalkya's [statement] has precisely the same meaning as that of

Kātyāyana.⁶

Devaṅṇabhaṭṭa, in the uttarapāda section, says that the defendant’s answer has four subdivisions: admmissive plea, denial, special pleading, and plea by way of former judgement.⁷ In the case of an admmissive plea, the legal procedure goes through only two stages—plaint and plea—and the verdict is delivered immediately. Because both parties have nothing to prove, and then they need not adduce any evidence in this case (see 2.2.2 below). The last quotation by Devaṅṇabhaṭṭa (underlined) is to this effect.

The aim of 2.2.1 appears to be deducing the synonymity between the statements of Kātyāyana and Yājñavalkya quoted in 0 and 2.2.1 respectively. In other words, it shows that *siddhi* is the synonym of *pratyākalita* in the second interpretation by “some (*kecit*)” (see 2.1). The possible but rejected understanding of *siddhi*—determination of victory or defeat—is in effect equivalent to verdict, *nirṇaya*, in the literal sense.⁸

The succeeding part shows another interpretation of *siddhi*, when one understands *pratyākalita* according to the opinion of *kecit*.

[2.2.2. Second view, by *anye*]

Others, on the other hand, explain that this [Yājñavalkya’s] statement is synonymous to the following one of other *smṛtis*:

[The legal procedure] is said to have four feet, as it has four parts understood by

6 0. *tathānyo ’pi bhedas tenaiva darśitaḥ pūrvapakṣas cottaras ca pratyākalitam eva ca | kriyāpādas ca tenāyaṃ catuspāt samudāhṛtaḥ || iti.*

1. *pratyākalitam uttarāṅgikārānantaram api vivādamānayoḥ kasyātra kriyopanyasanam nyāyayam iti prāḍvivākādīnām vimarśanam | kriyā likhitādīpramāṇam, tannirdeśaḥ kriyāpādaḥ | vivādātmakavyavahāraparyavasānabhāgatayā pratyākalitakriyayor api vyavahāratvāc catuspāt samudāhṛta ity uktam || ata eva saṅgrahakāreṇāpi paryavasānabhāgasyāpi vyavahāratvam uktam parasparam manusyaṇām svārthavipratipattiṣu | vākyān nyāyavyavasthānam vyavahāra udāhṛtaḥ || iti.*

2.1. *kecit upanyaste pramāṇe pramāṇābhāvaśaṅkāpanodakam jayaparājayanirṇayaphalakaṃ vimarśanam pratyākalitam āhuḥ | tanmate pādasankhyaiva hi vivakṣitā, na tu kramaḥ | pratyākalitapādasya turīyātvāpātāt.*

2.2.1. *yat tu yājñavalkyenoktam tatsiddhau siddhim ānoti viparītam ato ’nyathā | iti | tatrāpi siddhiśabdena siddhiphalakaṃ pratyākalitam ucyate | na punar jayaparājayāvadhāraṇarūpam tasya sampatipattiyuttare ’pi sattvāt dvipāt sampratipattiṣv iti vacanavirodhaprasaṅgāt | tasmāt tatkātyāyanavacanasamānārthataiva yājñavalkīyasya.*

7 *evaṃlakṣaṇam uttaram caturvidham jñeyam*

*caturvidhaḥ pūrvapakṣaḥ pratipakṣas tathaiva ca |
iti br̥haspatismaranāt | katham punaḥ pratipakṣacaturvidhyam ity apekṣite nāradaḥ
mithyā sampratipattiyā vā pratyavaskandanena vā | prānnyāyavidhisiddhyā vāpy uttaram syāc caturvidham ||*

itthambhūtalakṣaṇā ceyam ṛṭīyā. (SmC, uttarapāda (p. 97))

8 Devaṅṇabhaṭṭa appears to see *nirṇaya* in the literal sense, i.e., to deliver a verdict. The fact that he quotes a statement saying “*sthāpyau jayaparājayau*” in the first sentence of the *nirṇayādikṛtya* section (pp. 281–290) supports this. Some commentators interpret *nirṇaya* as a synonym with *pratyākalita* (2nd interpretation by *kecit*) or *siddhi* (1st interpretation); e.g., *Aparārka* (p. 616) says, “... In this [statement showing the four feet], the word verdict, *nirṇaya*, means a judicial consideration resulting in a verdict[, but not the verdict itself]” (*pūrvapakṣaḥ smṛtaḥ pādo dvitīyas tūttaras tathā | kriyāpādas tathā vācyas caturtho nirṇayas tathā || atra ca nirṇayaphalako nyāyaparāmarśo nirṇayaśabdena lakṣyate*).

plaint, answer, adducing of evidence, and completion of proof (*sādhyasiddhi*),⁹ which take place sequentially. (*DhK* 18)

[And they say two things:] In the case of an admissive plea, no evidence will be indicated, and [both litigants] need not prove the content of prosecution. So, the foot of *sādhyasiddhi*, completion of proof (i.e., *siddhi* in the second interpretation by *anye*), will not occur; and [in this case] there is no inconsistency with the statement—“In the case of an admissive plea, [one should know that the legal procedure] has only two feet.”

[2.3. *pādakrama*, or *pādas'* order, in this interpretation]

In this opinion [of *kecit*], the order of the feet is also indicated in another *smṛti*.

People have handed down thus: out of them [i.e., the four feet], the foot of plaintiff is the first, the answer is the second, the foot of [adducing] evidence is the next, and the verdict is the fourth. (*DhK* 18)¹⁰

As we have already seen, the aim of 2.2.1—to make *siddhi* synonym to *pratyākalita* in the second interpretation—was profitable to avoid a collision with the statement, “*dvipāt sampratipattiṣu*.” In 2.2.2, too, the claimant (i.e., *anye*) derives the same benefit by interpreting *siddhi* as indicating a new foot, *sādhyasiddhi*, and thus that *siddhi* does not mean a verdict.

Now return to the first planned task—reproducing the litigation Devaṅṇabhaṭṭa has in mind. To sum up the discussion in this subsection, by building together the interpretations given for *pratyākalita* (and, additionally, for *siddhi*), we can now picture the progressive stages of the litigation assumed by Devaṅṇabhaṭṭa (see Figure 1). In short, the case goes through seven stages at most, from the plaintiff to the verdict. Which of these he considers to be the components of *bhāṣādicatuṣpādatva* is still open to question. But more importantly, *nirṇaya* in the literal sense does not constitute *bhāṣādicatuṣpādatva*, and a verdict can be delivered even when the defendant’s plea is an admissive one.

⁹ GHARPURE [1948: 22] translates *pāda* a as: “On account of the plaintiff, the answer, the proof, the point to be established; by the establishment of these ... ” This translation comes by interpreting *bhāṣottarakriyāsādhyasiddhibhiḥ* (in *pāda* a) as consisting of two parts—*bhāṣottarakriyāsādhyā* (dvandva compound) and *siddhi* (which constitute a tatpuruṣa compound, connected with the former). But, the expression “*sādhyasiddhilakṣaṇaḥ pādo*” appearing in the *SmC* itself does not support his interpretation, because this expression regards *sādhyasiddhi* as one word.

¹⁰ 2.2.2. *anye punar asya vacanasya*

*bhāṣottarakriyāsādhyasiddhibhiḥ | kramavārtibhiḥ | ākṣiptacaturamśas tu catuṣpād abhidhīyate ||
iti smṛtyantaravacanena samānārthatām varṇayanti | sampratipattiyuttare tu sādhanānirdeśāt pratijñātārthasya asādhyatvāc ca na sādhyasiddhilakṣaṇaḥ pādo 'stīti dvipāt sampratipattiṣv iti vacanavirodho 'pi nāstīti ca vadanti.*

2.3. *atra mate pādakramo 'pi smṛtyantare darśitaḥ*

bhāṣāpādas tu tatrādyo dvitīyaś cottaras tathā | kriyāpādas tathā cānyaḥ caturtho nirṇayaḥ smṛtaḥ || iti.

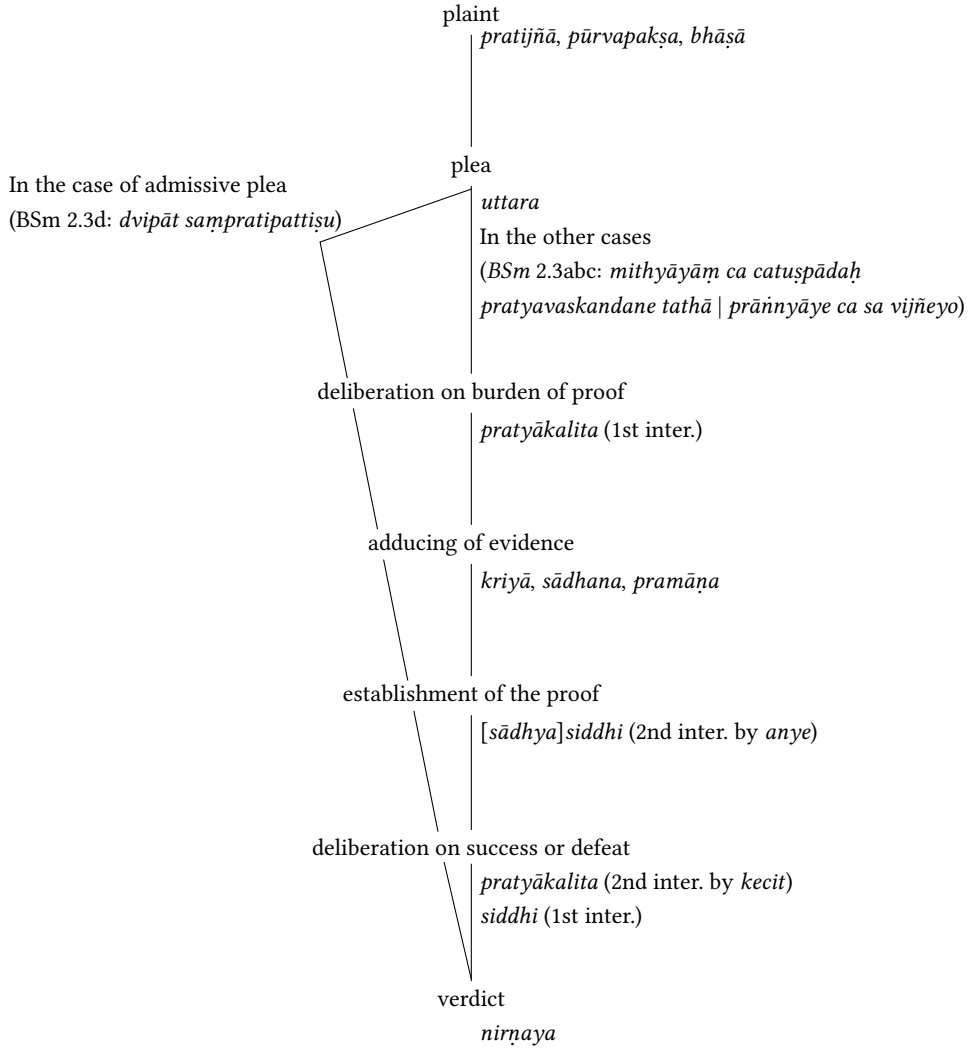


Figure 1 Outline of a legal procedure known to Devaṅṇabhaṭṭa

2.3 *dharmādivyavahāracatuṣpādatva* (*SmC*, pp. 20ff.)

We now move back to the second subsection of the *vyavahārabhedāḥ* section, which deals with the *dharmādivyavahāracatuṣpādatva*. To summarize the discussion in this subsection, Devaṅṇabhaṭṭa interprets *dharmādivyavahāracatuṣpādatva* as meaning that the verdict—the last stage of *bhāṣādivyavahāracatuṣpādatva*, and thus *vyavahāra* in the secondary meaning—has four subdivisions named *dharma*, etc. In this case, it poses a problem what the characteristics of the discussion by Devaṅṇabhaṭṭa are, compared with the general explanation shown in the introduction. Or, does the latter explain the former enough?

The general account seems to represent a more advanced stage of knowledge of *dharmādivyavahāracatuṣpādatva* than that of Devaṅṇabhaṭṭa. Considering the following

discussion, we will be able to establish a bridgehead of clarifying this point.

SmC, vyavahārabhedāḥ (pp. 20ff.; the original text in fn. 11)

A legal procedure has four feet—*dharmā*, *vyavahāra*, *caritra*, and *rājaśāsana*. The successor nullifies the predecessor. (*Nāradaśrīti* mātṛkā 1.10)

[Question] The plaint, [defendant’s] answer, [adducing of] evidence, and verdict are the feet of the legal procedure. And *dharmā*, etc., are not. Even so, why is this stated?

[Answer] ^aThe foot called *nirṇaya*, verdict, has four divisions (*caturvidha*) according to *dharmā*, etc. ^bOf these, the verdict in conformity with *dharmā*, etc., is denoted by them respectively. It is therefore still appropriate to explain that [the legal procedure] has four feet according to *dharmā*, etc. To the same effect, Br̥haspati states as follows:

^cA verdict in a doubtful case is said to be of four kinds (*catusprakāra*) by *dharmā*, *vyavahāra*, *caritra*, and *nṛpājñā*. (*BSm* 1.18)¹¹

The last statement of Br̥haspati is worthy of consideration. For the purpose to reconstruct Devaṅṇabhaṭṭa’s knowledge, it is more important how Devaṅṇabhaṭṭa interprets it. OLIVELLE AND McCLISH [2015: 35], as most other previous researchers do, translate *prakāra* (of *catusprakāra* in this statement) as “kinds or sorts,” while they simultaneously show that it stands for “means or ways.” Both understandings are possible as far as the original meaning is concerned. But it is unlikely that Devaṅṇabhaṭṭa understands it in the latter sense.

Devaṅṇabhaṭṭa starts with *tathā* (“To the same effect, ...”) and quotes this statement, suggesting that his understanding of the statement must follow his own explanation written immediately before the former. Here we can consider the following correspondence between the statement and Devaṅṇabhaṭṭa’s interpretation: *catusprakāra* is a synonym for *caturvidha*; and, *dharmena ... nṛpājñayā abhīhitaḥ* corresponds to i) *dharmādyanusāreṇa ucyate*, or ii) *tacchabdena nirdiśyate* (cf. my translation in p. 33 and the text in fn. 11).

^c <i>sandigdhe ’rthe vinirṇayaḥ</i>	<i>catusprakāro</i>	<i>dharmena ... nṛpājñayā ’bhīhitas</i>
^a <i>nirṇayapādo</i>	<i>caturvidhaḥ</i>	i) <i>dharmādyanusāreṇa ucyate</i>
^b <i>tatra yadanusāreṇa yo nirṇayaḥ saḥ</i>		ii) <i>tacchabdena nirdiśyate</i>

Anyway, the four feet, *dharmā*, etc., are i) the specific criteria applied to divide the verdict into four sorts, or ii) the names to indicate these four sorts. They are not, for Devaṅṇabhaṭṭa, means nor ways for reaching a verdict. This understanding does not agree with the general assumption in previous studies, to which I will come back later in the discussion section.

¹¹ *dharmāś ca vyavahāraś ca caritraṃ rājaśāsanam | catuṣpād vyavahāro ’yaṃ uttaraḥ pūrvabādhakaḥ || nanu pratijñottarapramāṇanirṇayānām vyavahārapādatvaṃ* na dharmādmām iti kim idam uktam | ^aucyate nirṇayapādo dharmādyanusāreṇa caturvidhaḥ | ^btatra yadanusāreṇa yo nirṇayaḥ sa tacchabdena nirdiśyate | tena dharmādibhir api catuṣpāttvarṇanam yuktam eva | tathā ca br̥haspatiḥ*

^c*dharmena vyavahāreṇa caritreṇa nṛpājñayā | catusprakāro ’bhīhitas sandigdhe ’rthe vinirṇayaḥ.*
* *vyavahārapādatvaṃ emended] -padatvaṃ.*

Devan̄abhāṭṭa, continuing, gives definitions for the four kinds and indicates that they further bifurcate.

SmC, vyavahārabhedāḥ (continued; the original text in fns. 12-14)

And Kātyāyana defines each of the four verdicts.

A verdict is precisely according to *dharma* [or, called by the very word *dharma*] when the offender affirms their guilt, and the owner acquires his property in the dispute. (*KSm* 35)

An offense is injuring others, etc., and guilt (lit., state of being the performer) is being the one who did it.

It [i.e., a verdict] is remembered as *vyavahāra* when those who complete *dharma* show any Dharmaśāstric texts to decide the case. (*KSm* 36)

It means that a verdict, through the complaint, answer, etc., defined in the *dharmaśāstras*, is named *vyavahāra*.¹²

Whether following *dharma* or not, whatever people always practice according to local custom is called *caritra*. (*KSm* 37)

It means that a verdict following it [i.e., *caritra*, habitually practiced acts] is also called in the same way.

What a king rightly establishes as *dharma* without contradicting *smṛti* rules on judicature and the local usages is a *rājaśāsana*. (*KSm* 38)

This statement means that a verdict reached without contradicting other authorities and on the king's own judgement is called *rājaśāsana*.¹³

And Bṛhaspati, on the other hand, states that each kind has two divisions.

Learned ones say that each has two divisions according to the difference in their action. (*BSm* 9.2ab)

He [i.e., Bṛhaspati] himself shows the two divisions as well.

When [the judges] consider duly, reason out, and examine the case with oaths, it shall be known to be [the first type of] *dharmanirṇaya*, i.e., a verdict following *dharma*. (*BSm* 9.3)

In the case that the defendant affirms or that [the litigants] rightly purified themselves by ordeals, it is said to be a second [type of] *dharmanirṇaya*. (*BSm* 9.4)

[These statements] mean that: [A verdict] delivered by following facts is the first

¹² *caturvidhānām api nirṇayānām lakṣaṇam āha kātyāyanaḥ*
doṣakārī tu kartṛtvam dhanasvāmī svakam dhanam | vivāde prāpnuyād yatra dharmeṇaiva sa nirṇayaḥ ||
doṣo hiṃsādih | kartṛtvam tatkaritvam |
smṛtīśāstram tu yat kiñcit prathitam dharmasādhakaih | kāryāṇām nirṇayārthe tu vyavahāraḥ smṛto hi
sah ||

dharmasāstranirūpitapratijñottarādyanusāreṇa nirṇayo vyavahārākhyā ity arthaḥ.
¹³ *yadyad ācaryate yena dharmyam vādharmyam eva vā | deśasyācaraṇān nityam caritraṃ tat prakīrtitam ||*
tadanusārīti nirṇayo 'pi tathaiva prakīrtita ity arthaḥ |
nyāyāśāstrāvirodhena deśadrṣṭes tathaiva ca | yaṃ dharmam sthāpayed rājā nyāyāṃ tad rājaśāsanam ||
asyāyam arthaḥ mānāntarāvīruddho rājābuddhimātraparikalpito nirṇayo rājaśāsanam ity ucyate iti.

[type of] *dharmākhyanirṇaya* (same as *dharmānirṇaya*); Without following facts, [a verdict] made by an admmissive plea or divine evidence (i.e., ordeal) is the second.¹⁴

For simplicity, the four kinds of verdicts denoted by the word *dharmā*, etc., will be referred to as *dharmānirṇaya* and so on. In short, the last paragraph quoted above informs us of the two types of *dharmānirṇaya*. The sentences defining the two types (underlined) correspond respectively to the *BSm* 9.3 and 9.4. Recall that in the case of an admmissive plea, the legal procedure will have only two stages, leading to an immediate verdict (see Figure 1). The second type of *dharmānirṇaya* includes i) one resulting from the defendant's admmissive plea, or ii) one through ordeals after the defendant answers in the other ways. The first type of *dharmānirṇaya*, on the other hand, is the one delivered only after the duly consideration and examination with an oath.

The next part shows the two types of *vyavahāranirṇaya*.

SmC, *vyavahārabhedāḥ* (continued; the original text in fn. 16)

[A verdict] delivered through evidence is said to be [the first type of] *vyavahāra[nirṇaya]*; One, where [the defendant makes] perversions of the words continuously, the second.¹⁵ (*BSm* 9.5)

[Bṛhaspati] here intends human ones by the word *pramāṇa*, i.e., evidence. This is because a verdict through divine ones is the branch of *dharmānirṇaya*.¹⁶

In other words, the first type is the one through adducing human evidence after the defendant makes an answer other than admmissive plea. And the second is the one due to the certain deficiency of the defendant's answer. Figure 2 shows the two types of *dharmānirṇaya* and *vyavahāranirṇaya*, in relation to Figure 1.

The discussion of *dharmādivyavahāracatuṣpādatva* leaves now only the two feet—*caritra*, *rājasāsana*.

SmC, *vyavahārabhedāḥ* (continued; the original text in fn. 17)

¹⁴ *atraikaikaprakārasya punaś ca dvaividhyam āha bṛhaspatiḥ*

ekaiko dvidvidhaḥ proktaḥ kriyābhedān manīṣibhiḥ | iti |

dvaividhyam api tenaiva darśitam

samyag vicārya kāryaṃ tu yuktyā saṃparikalpitam | parikṣitam ca śapathaiḥ sa jñeyo dharmānirṇayaḥ ||

pratīvādī prapadyeta yatra dharmas sa nirṇayaḥ | divyair vā śodhitas samyak dviṭiyas sa udāhṛtaḥ ||

*saha tattvānusaranena kṛtaḥ prathamō dharmākhyānirṇayaḥ | vinā tattvānusaraṇaṃ satyottareṇa vā divya-
pramāṇena vā kṛto dviṭīya ity arthaḥ.*

¹⁵ GHARPURE's translation [1948: 18], "a chicanerous answer being regarded as 'no answer,'" appears to pre-suppose the expression "*vākchalānuttaratvena*," this reading being also attested by some literature (reported by RANGASWAMI AIYANGAR in his reconstruction of the *BSm*, p. 94). But, an alternative interpretation that connects this compound ended with *-tva* (describing the nature of object) to the contextually understood subject, defendant (*pratyarthin* or its synonyms), could be more probable. In this case, the emendation of *vākchalānuttaratvena* to *[-a-a]nuttaratvena* will be unnecessary (cf. fn. 16 below). My translation is grounded on this interpretation.

¹⁶ *pramāṇaniścito yas tu vyavahāras sa ucyate | vākchalānuttaratvena dviṭīyaḥ parikirtitaḥ ||
pramāṇam atra mānuṣaṃ vivakṣitam | divyaniścitasya dharmānirṇayaakoṭitvāt.*

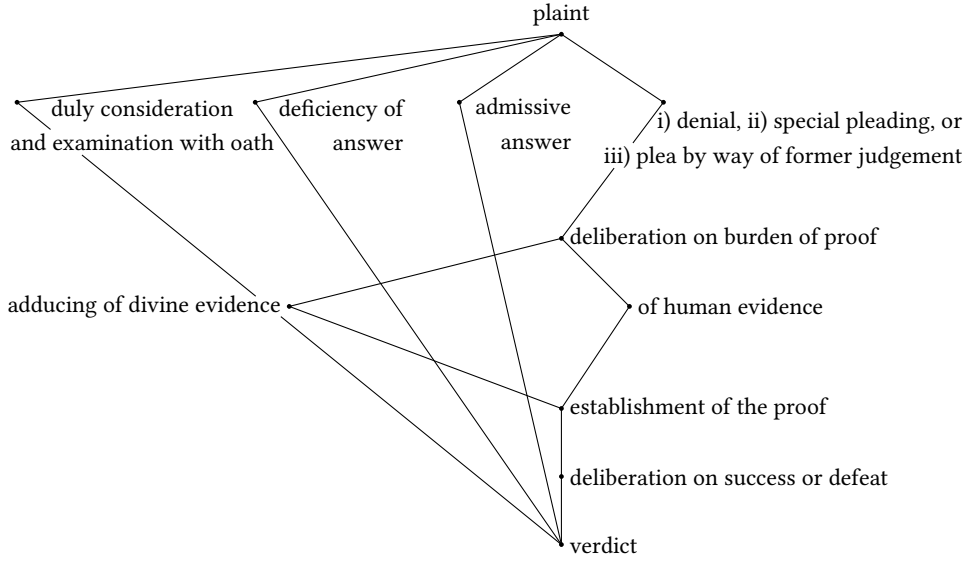


Figure 2 Two types of *dharma-* and *vyavahāranirṇaya*

[A verdict] delivered by inference is said to be [the first type of] *caritra[nirṇaya]*. Specialists regard one through local usages as the second. (*BSm* 9.6)

An inference is made based on proof, such as holding a torch in one’s hand.

A verdict, where there is no evidence, is remembered as [the first type of] *rājājñā[nirṇaya]*. People regard the one not contradicting *smṛti* rules as the second. (*BSm* 9.7)

And Vyāsa expands on the meaning of this [statement beginning with] “[A verdict,] where there is no evidence...”

People have handed down that [human] evidence has three kinds—documents, witnesses, and enjoyment. And the learned know that inference is judicial reasoning and logical deduction. Customary practice is said to be local usages from the past. Oaths supporting the point at issue and words of truth are *smṛti* [rules]. The wise know that a verdict, where these do not exist, is *rājājñā[nirṇaya]*. (*DhK* 235)¹⁷

We can regard inference as a substitute for human or divine evidence. So, the first type of *caritranirṇaya* is a verdict through it, i) when there is no human nor divine evidence, or

¹⁷ *anumānena nirṇītaṃ caritram iti kathyate | deśasthityā dvitīyas tu sāstravidbhir udāhṛtaḥ || anumānam ulkāhastādilingam |*
pramānarahito yas tu rājājñā nirṇayah smṛtaḥ | sāstrarityavirodhena tathā cānyaḥ prakīrtitaḥ || iti |
pramānarahita ity asyārtho vyāsenā prapañcitaḥ
likhitaṃ sāksīno bhuktiḥ pramānaṃ trividhaṃ smṛtam | anumānaṃ vidur hetuṃ tarkaś ceti manīṣiṇaḥ ||
deśasthitiḥ pūrvakṛtā caritram samudāhṛtam | arthānurūpās śapathāḥ smṛtyas satyapadādayaḥ ||
teṣāṃ abhāve rājājñām nirṇayam tu vidur budhāḥ | iti.

(Hereafter, the discussion on the statement, *uttaraḥ pūrvabādhakaḥ*, follows.)

ii) when, for some reason, proof by inference seems preferable.

What concretely is the second type of *caritranirṇaya*? Devaṇṇabhaṭṭa gives an interesting example in the following part.

SmC, vyavahārabhedāḥ (p. 24; the original text in fn. 18)

A man, such as an Ābhīra, is accused by some person: “This man has committed adultery with another man’s wife, and there are witnesses,” and he responds: “What the witnesses have said is true. Nevertheless, I should not be punished because I did this on the strength of local usages. And the king has recorded this in the book.” In this case, *vyavahāra[nirṇaya]* is nullified by *caritra[nirṇaya]*, because the punishment stipulated by the former is annulled by the latter.¹⁸

This exemplifies the second type of *caritranirṇaya* because it never refers to any inference. The accused admits adultery but pleads not guilty by saying that he committed it on the strength of *caritra*, i.e., local usages. We can safely read *caritra* here as synonymous with *deśasthiti*. Therefore, the second type is the verdict reached through local usages functioning as a source of law.

To locate the second type of *caritranirṇaya* among the other verdicts, we need to take a closer look at Devaṇṇabhaṭṭa’s terminology. As underlined in the translation above in p. 36, according to him, Vyāsa’s statement expounds the one, “*pramāṇarahito yas tu rājājñā nirṇayaḥ smṛtaḥ*.” It follows that Devaṇṇabhaṭṭa understands the two statements to be semantically equal. Now, given the correspondence between the two statements, the meaning of *pramāṇa* (“evidence”), which Devaṇṇabhaṭṭa assumes, would correspond to the indicative content of the demonstrative pronoun, *teṣāṃ* (“these”).

From the example of the second type of *caritranirṇaya*, we have checked that local usages, i.e., *deśasthiti*, serve as a source of law. It is noteworthy that *deśasthiti* in this sense is one of the contents of demonstrative *teṣāṃ*, along with human and divine evidence. Daring to say, it presumably follows that *pramāṇa* here encompasses evidence and sources of law in the modern term. If this is the case, the matter to be proved, i.e., *sādhyā* or *prameya*, will include not only the criminal facts but also the defendant’s illegality or validity. In other words, the second type of *caritranirṇaya* is delivered by proving the defendant’s illegality/validity through local usages (up to this point, constituting *kriyāpāda*).

Finally, the first type of *rājājñānirṇaya*, a synonym with *rājaśāsanānirṇaya*, is a verdict issued by the king in the case that there is no evidence; and the second, resulting from the consideration of edict as a source of law. Figure 3 shows two types of *caritranirṇaya* and *rājaśāsanānirṇaya*.

¹⁸ *yadā punaḥ paradārābhigamaṇaṃ kṛtam anena sākṣiṇo vidyanta iti kaścīd ābhīrādīḥ kenacid abhiyukto brūte satyam etat sākṣibhāṣitaṃ tathāpi nāhaṃ daṇḍyaḥ caritrabalān mayaitat kṛtam | niveṣitaṃ ca pustake rājñā tad iti caritreṇa vyavahāro bādhyate vyavahārataḥ prāptasya daṇḍasya caritrato nirvṛtatvāt.*

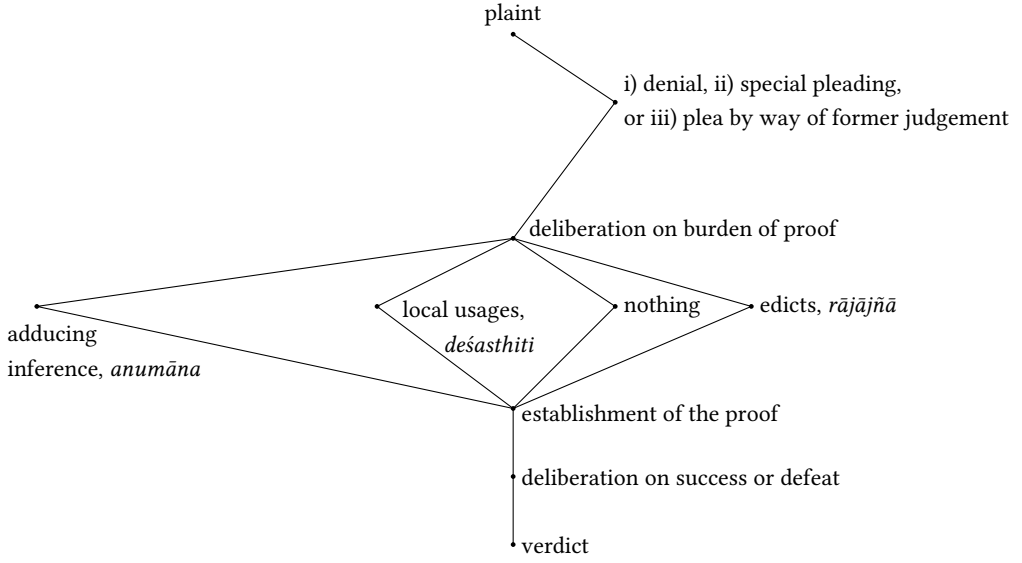


Figure 3 Two types of *caritra*- and *rājaśāsananirṇaya*

3 Discussion

3.1 Indispensability of a verdict, *nirṇaya*, in *vyavahāra*

We have seen the arguments of Devaṅṇabhaṭṭa on *bhāṣādi*- and *dharmādivyavahāracatuṣpādatva*. Specifying the features of his discussions will help properly situate Devaṅṇabhaṭṭa in history. First, Devaṅṇabhaṭṭa interprets the *dharmādivyavahāracatuṣpādatva* as, so to speak, **dharmādinirṇayacatuṣpādatva*—verdict’s having four kinds respectively called *dharma*, etc. Here, he substitutes *nirṇaya* for *vyavahāra*, about which Nārada states, “*catuspād vyavahāro ’yam*.” This replacement can be translated into his idea that *vyavahāra* reaches *nirṇaya* without exception.

But, this interpretation seems not to have applied in all ages. The very argument by himself suggests the existence of *vyavahāra* without *nirṇaya*. In the context giving the first interpretation of *siddhi* as a foot (*bhāṣādivyavahāracatuṣpādatva*, 2.2.1; p. 29 above), he shows that *siddhi* is “not the determination of victory or defeat [i.e., *nirṇaya* in the literal sense] itself.” This refutation paradoxically assumes the opponent who interprets *siddhi* in this manner.

The premised indispensability of *nirṇaya* makes Devaṅṇabhaṭṭa think that the refuted interpretation would cause inconsistency with the statement, “*dvipāt sampratipattiṣu*.” However, if the above-assumed opponent regards no problem with their understanding, they may know some or, at least, one kind of *vyavahāra* in which *nirṇaya* never occurs. If so, a *vyavahāra* where the defendant makes an admmissive answer will be one of this kind.

To my best knowledge, Asahāya and Bhavasvāmin represent the historical existence of such an opponent. While beyond the scope of this paper, their terminology suggests that

they regard certain types of *vyavahāra* as not reaching a verdict.¹⁹

3.2 Interpretations of *dharmādyanusāreṇa* and *catuṣprakāra*

And, the four feet, *dharmā*, etc., have been shown to be i) the specific criteria to divide the verdict into four sorts, or ii) the names to denote them (see p. 33 above). For Devaṅṇabhaṭṭa, *dharmādivyavahāracatuṣpādatva* does not inform procedural means for reaching verdicts. Previous studies have missed this point. The latter interpretation—as showing procedural means—appears to represent later stages by post-Devaṅṇabhaṭṭa theorists, e.g., Mādhavācārya (ca. 1330–1385). As follows, Mādhava explicitly reckons the four feet to be procedural means, interpreting *prakāra* (in *catuṣprakāra*) as *nirṇayahetu*.

Parāśaramādhavīya, pp. 9-12 (the original text in fn. 20)

[[Question] The first objection claiming that *dharmā*, etc., do not constitute *vyavahāracatuṣpādatva*; in more copious style than Devaṅṇabhaṭṭa shows (cf. p. 33 above)]
 [Answer] There is no such fault because [*dharmādivyavahāracatuṣpādatva* is possible on account of the ways, *prakāras*, such as *dharmā*, etc. Here, ^a[a foot] named *nirṇaya*, i.e., verdict, is expressed as the fourth foot. ^bIt arises by the four feet of *dharmā*, etc. Regarding this, Bṛhaspati states the following:

^cA verdict in a doubtful case[, which] is said to be [the fourth foot, is reached] by the four means—*dharmā*, *vyavahāra*, *caritra*, and *nrpājñā*. (BSm 1.18)

Therefore, *dharmādivyavahāracatuṣpādatva* occurs, as they are the [procedural] means for reaching a verdict. And, Kātyāyana expands their nature of being the means for reaching a verdict [—i.e., **dharmādinirṇayahetutva*], saying ...²⁰

As shown in section 2.3 of this paper, Devaṅṇabhaṭṭa semantically connects *dharmēṇa* ... *nrpājñayā* with [*a*] *bhīhitaḥ*. Mādhavācārya, in contrast, associates it with *niṣpadyate*, which he supplements in his paraphrase; and, [*a*] *bhīhitaḥ* likewise with *caturthapādaḥ*. This is clear from the comparison below.

^c <i>sandigdhe 'rthe vinirṇaya[o]</i> ^a <i>yo 'yaṃ nirṇayākhyas</i>	^{bhīhitaḥ} <u><i>caturthapādo</i></u> ^{bhīhitaḥ}	<i>dharmēṇa ... nrpājñayā catuṣprakāro</i> ^b <i>sa dharmādibhir caturbhiḥ niṣpadyate</i>
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As we can know from the text quoted above, Mādhava, like other post-Devaṅṇabhaṭṭa writers, discusses in almost the same structure as Devaṅṇabhaṭṭa does. But, he, as one example, has put forth a new interpretation—coming close to the general account given by

¹⁹ I have discussed this point at full length at the 28th Annual Conference held by the Association for the Study of the History of Indian Thought, 25 Dec 2021.

²⁰ ... *nāyaṃ doṣaḥ | dharmādīnām prakārāntareṇa pādatvopapatteḥ | 'yo 'yaṃ nirṇayākhyas caturthapādo 'bhīhitaḥ* ^b *sa dharmādibhiḥ caturbhir niṣpadyate | tad āha bṛhaspatiḥ*

^c *dharmēṇa vyavahāreṇa caritreṇa nrpājñayā | catuṣprakāro 'bhīhitaḥ sandigdhe 'rthe vinirṇayaḥ || iti | tasmān nirṇayahetutayā dharmādīnām vyavahārapādatvaṃ bhaviṣyati | teṣām ca nirṇayahetutvaṃ kātyāyanena prapañcitam ...*

previous studies.

3.3 Two watersheds of the verdicts, i.e., *vyavahāracatuṣpādatva* for Devaṅṅabhaṭṭa

Devaṅṅabhaṭṭa, as it were, installs evacuation stairs in *vyavahāra*: that is, he depicts special routes for issuing two verdicts—the first type of *dharmanirṇaya* and the second type of *vyavahāranirṇaya*. The former is issued without waiting for the defendant’s answer, and the latter is due to its defect. So both these types are related to *uttarapāda*, a judiciary part where the defendant responds to the plaintiff. And the second type of *dharmanirṇaya* includes a verdict issued immediately after the defendant responds in an admittive plea. It follows, therefore, that the branch point of these three types is located around *uttarapāda* (also see Figure 2).

Figure 4 shows the remaining types together with the three mentioned above. We can see that *kriyāpāda* serves as the watershed between these types. As we have seen, the litigants prove facts and illegality/validity by *pramāṇa*, including evidence and sources of law, in this *kriyāpāda*. Devaṅṅabhaṭṭa, while informing us of the relative strength of the eight verdicts by the rule of nullifying predecessors, also shows that of *pramāṇas*.

WATASE [1975: 52] insightfully regards the relative strength of the four feet as a three-cornered contest between *dharmaśāstra*, local usages, and edicts as the sources of law, which occurs after the completion of factual proof.²¹ But, the depiction of *kriyāpāda* rendered above from the narrative of Devaṅṅabhaṭṭa does not support WATASE’s point because *pramāṇas* for the former have broader sense than sources of law.

4 Concluding remarks

It would be redundant to repeat how Devaṅṅabhaṭṭa differs from the general assumption in previous research. He represents an earlier stage of knowledge on *bhāṣādi-* and *dharmādi-vyavahāracatuṣpādatva*, suggesting that most previous studies have projected the interpretation in later times onto preceding literature. Hopefully, these findings will accelerate the recent research trend of historically re-reading the texts on Sanskrit jurisprudence. In fact, my research paper on the related topic is currently under preparation.

²¹ As a point to note, WATASE’s model, translated below from Japanese, also cannot comprehend the first type of *dharmanirṇaya*, second type of *vyavahāranirṇaya*, and first type of *caritrānirṇaya*:

“A close reader will notice that the ground for reaching a verdict, shown by the word *dharma*, etc., consists of i) proving the facts of conflict and ii) choosing a criterion to resolve the dispute. The former determines which of the litigants’ claims is right; the latter gives a normative evaluation of the proved facts.

In the case of *dharmanirṇaya*, the grounds for a verdict are i) proving the fact by confession [i.e., an admittive plea] or ordeal and ii) evaluation by *dharmaśāstras*. Likewise, i) proving of the facts by so-called human evidence such as testimony and documents, and ii) Dharmasāstric evaluation constitute the grounds for *vyavahāranirṇaya*. In contrast to these two, *caritrānirṇaya* and *rājasāsanānirṇaya* show somewhat different looks; that is, *caritrānirṇaya* has a feature in that it is reached simply by evaluating the facts of conflict through the local usages. Here it does not matter how the disputed facts have been proved. Lastly, *rājasāsanānirṇaya*, on the other hand, is characterized by the fact that there the edicts give one or both of i) proof of the facts in dispute and ii) the normative assessment” (WATASE 1975, 52; my translation).

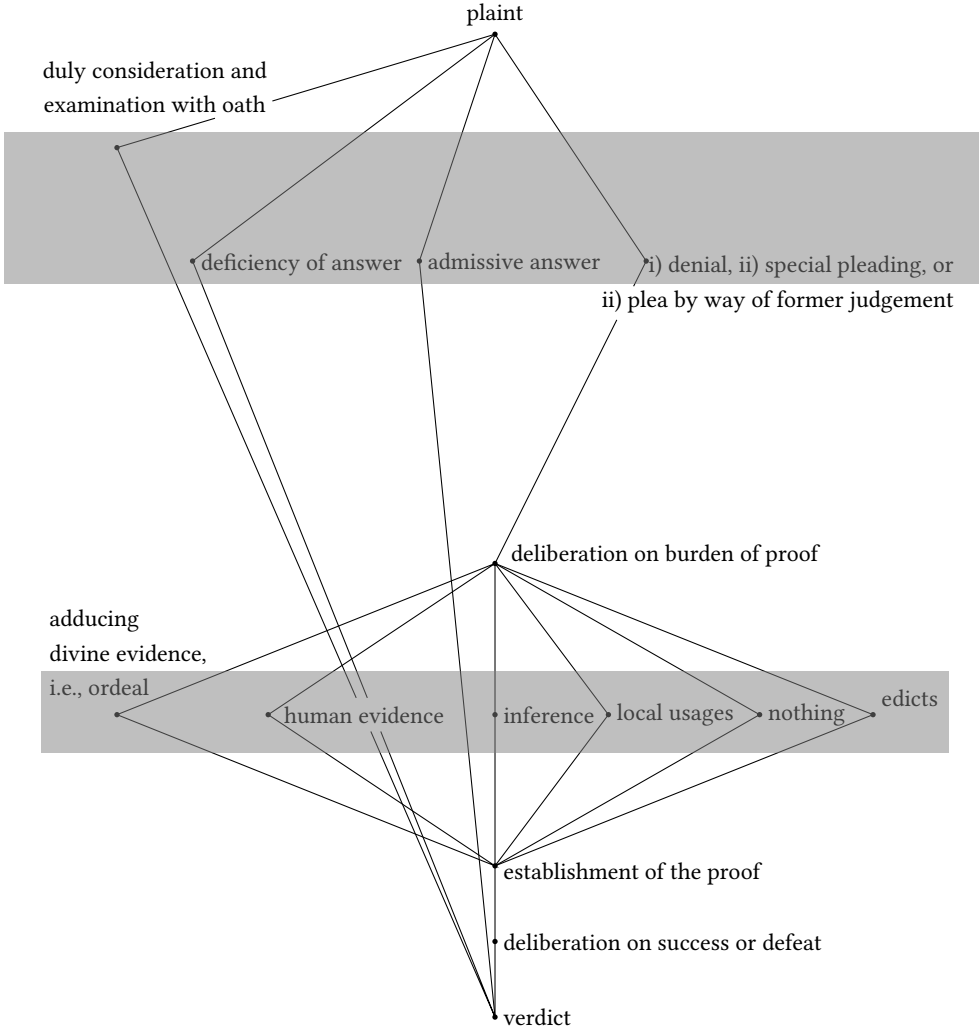


Figure 4 Comprehensive procedural model of eight types of verdicts

Abbreviations and Primary Sources

BSm *Bṛhaspatismṛti (Reconstructed)*. Ed. K. V. RANGASWAMI AIYANGAR. Baroda: Oriental Institute, 1941.

DhK *Dharmakośaḥ*. Eds. Lakṣmaṇaśāstrī Jośī, et al. 5 vols., 25 parts. Satara: Prajnapathashala Mandal, 1937–1941.

KKT *Kṛtyakalpataru, vyavahārakāṇḍa. Bhaṭṭaśrīlakṣmīdharaviracite Kṛtyakalpatarau dvādaśa bhāgaḥ vyavahārakāṇḍam*. Ed. K. V. RANGASWAMI AIYANGAR. Baroda: Oriental Institute, 1953.

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3: Prāyaścittakāṇḍa and Vyavahārakāṇḍa. Ed. Chandrakānta TARKĀLANKĀRA. Calcutta: Asiatic Society, 1899.

SmC *Smṛticandrikā. Smṛticandrikā Śrīyājñikadevaṇabhaṭṭopādhyāyāracitā.* Ed. L. SRINIVASACHARYA. 6 parts. Mysore: Government Oriental Library, 1914–1921.
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〈Keywords〉 four feet of legal procedure, *Smṛticandrikā*, *dharmānibandha*, *dharmasāstra*

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Devanṇabhaṭṭa が示す *dharmādi-/bhāṣādivyavahāracatuspādatva* を 中世法学史上に再定位する

谷口 力光

中世南インドに生きた法理論家 Devanṇabhaṭṭa (ca. 1150–1225) はどのような法廷での司法運用を知っていたのだろうか。これを素描することにより南アジア法制史研究のためにより良い基礎を築くことが本稿の目的である。

ダルマ文献群の *vyavahāra* 章内にある (*sādhāraṇāsādhāraṇa*)*mātrkā* などと呼ばれる節は様々な訴訟分析概念を知らせる。このような分析概念の中で訴訟の全体構造を我々に知らせるものが、*dharmādivyavahāracatuspādatva* と *bhāṣādivyavahāracatuspādatva* である。これらは、i) *dharma* など (意味内容は定まらない)、もしくは ii) *bhāṣā* など (訴訟諸過程) の 4 支分から構成されるという *vyavahāra* の性質を表現している。これらの概念の研究から法制史研究への示唆を得ようとする先行研究の戦略が本稿でも基底をなす。

古典的研究は複数資料の記述を一般化する形で訴訟構造を明かそうとしてきたが、この各資料の個別性・歴史性を捨象するあり方はその後の研究の批判的となった。最近の重要な研究は *Kauṭīliya-Arthasāstra* がアテストする *dharmādi[vyavahāra]catuspādatva* の原義が探っている。しかし、可能な解釈幅が広い古テキスト群を対象とした研究では個別テキストがいかなる司法制度を想定しているのかを示すことは困難である。

むしろこの目的には *dharmanibandha* 類がより良い種本となるだろう。Devanṇabhaṭṭa の主著 *Smṛticandrikā* は明白な訴訟体系を示した現存最古の文献の一つであり、後代の *nibandha* にもその議論の大枠は継承されている。Devanṇabhaṭṭa の語りのみから彼の知る *vyavahāracatuspādatva* を寸描することで上記の難点を克服することを企図した。

本稿は序論・考証・議論・結論 (各々 section 1–4 に対応) の 4 節で構成される。

そのうち、考証パート (section 2) は、*Smṛticandrikā* から *bhāṣādivyavahāracatuspādatva* と *dharmādivyavahāracatuspādatva* に関する議論を抽出し、先行翻訳等への批判を交えながら原著者の意図を考証している。その過程で作成した図表は、Devanṇabhaṭṭa という中世に生きた一法理論家が例証する訴訟体系の理解をより容易にするだろう。

続く議論パート (section 3) では、特筆すべき 3 点に絞り、Devanṇabhaṭṭa が示す司法制度の歴史的 position を他資料との比較から議論している。

Devanṇabhaṭṭa が想定する *vyavahāra* では判決が必須要素であることは、先行一次資料などで判決と結びつかない *vyavahāra* が想定されているらしいことと対照的である (section 3.1)。また、*dharmādyanusāreṇa*, *catusprakāra* という 2 つの表現の解釈について、Devanṇabhaṭṭa と Mādhvacārya (ca. 1330–1385) の間には重大な相違がある。古典的先行研究が与えてきた非歴史的な説明は、後者による解釈を時代的に先行する他の一次資料群へ投影するものであることが示唆される (section 3.2)。最後に、Devanṇabhaṭṭa が示す 8 種の判決は何を分岐点とするのかを議論する。先行研究が与えていた洞察に富んだ *dharmādivyavahāracatuspādatva* の見方とは裏腹に、少なくとも Devanṇabhaṭṭa はこの見方を支持しないことが示される (section 3.3)。