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Crime and Punishment in the Light of the Dharmaśāstra

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Introduction: In the beginning of his article "What is Law" Ronald Rubinstein has quoted Tennyson¹—

"O great and sane and
simple race of brutes
That own no lust,
because they have no law."

Really it is a matter of wonder that animals have no laws, no judges, no police and courts. Man is the best creation of God. But he requires the machinery of administration, laws and courts. It is because of man's selfish nature. The great seers of ancient India deeply studied human psychology and observed human passions and emotions. So they formulated codes to control their unrestrained passions, to regulate human behaviour, to check unbound emotions, to chain unfettered liberty and to subliminate their nature. As a result of these, Dharmaśāstras emerged in India in between 800 B.C. and 900 A.D.²

In ancient legal system of India, Dharma and law were synonymous terms because the latter essentially constituted part of the former. According to Manu.³

"Dharma is that which is followed by those learned in the Vedas and what is approved by conscience of the virtuous men who are free from hatred and inordinate affection." Manu further says,⁴

"श्रुतिस्तु वेदविज्ञेयो धर्मशास्त्रं तु वै स्मृतिः" "Śrutis are known as the Vedas and Smṛtis are

known as the Dharmaśāstras." Smṛtis are of two kinds— (i) Dharmaśūtras and (ii) Dharmaśāstras.⁵ Smṛtis written in prose style are called the Dharmaśūtras. The Principal authors of the Dharmaśūtras are— Gautama, Baudhāyana, Āpastamba, Vaśiṣṭha, Viṣṇu, Hārīta, Śadnka, Likhita, Uśanas, Hiranyakeśin and Kāśyapa. Those in verse are called the Dharmaśāstras. Yājñavalkya⁶ gives the names of the various Dharmaśāstras—Manu, Atri, Viṣṇu, Hārīta, Yājñavalkya, Uśana, Angira, Yama, Āpastamba, Samvarta, Kātyāyana, Brhaspati, Parāśara, Vyāsa, Śankha, Likhita, Dakṣa, Gautama, Śātātapa and Vaśiṣṭha. The most eminent among the Dharmaśāstrakāras, thereof, are Manu, Yājñavalkya, Nārada and Viṣṇu.

Crimes and Punishments in the Dharmaśāstras: Crime means an offence against an individual or the state which is punishable by law. In some Dharmaśāstras 'padas', 'chalas' and 'aparādhas' stand for 'crime'. In the Dharmaśāstras these are included in the Vyāvāhara part. 18 titles⁷ are connected with this part. Most of these titles deal with crimes and punishments.

Forms of Crime: No country in the world could and make a list of crimes in which all the crimes are mentioned. It is an impossible task to enlist all the civil

and criminal cases. But our Dharmaśāstrakāras ventured to do it. With high intellect, astounding talent, extra-ordinary knowledge about human psychology, practical experience in human behaviour, depth in human conduct, deep studies in human activities, sound knowledge in penology, exact feelings about the need of society, dexterity in criminology and rational thinking, the Dharmaśāstrakāras tried to enlist the causes of crime and methods of punishment. Some of them are mentioned below—

(a) **Vākpārusya:** It means the use of abusive words that loudly proclaim censure of another's country, caste, family and the like and that cause mental pain or offence to that man against whom these are used. As for examples— "Calling a man fool or a rogue, charging a man grave sins⁸ abusing a brahmana⁹, speaking a person blind or cripple¹⁰ etc.

(b) **Daṇḍapārusya:** It means assault. Examples are— Touching, threatening to strike, raising the hand or a club to strike one of higher castes¹¹, even causing injuries to animals and trees¹². But the right of private defence of a person or property was recognised¹³.

(c) **Steya:** It means theft. It is concerned with the stealing of earthen-ware, seats, cots, wood, hids, grass, beans, cooked food, clothes, animals, gold, jewels, silken clothes, wealth of brahmins or temples, house-breaking, breaking royal store-houses, armoury, the inner shrine in a temple, etc.¹⁴ But theft was allowed in some special cases¹⁵.

(d) **Sāhasa:** It means any act which

is done with violence in defiance of or in spite of the presence of royal officers or guards. The principal crimes included under Sāhasa in its narrow sense are homicide, rape and robbery.

(e) **Strīsamgrahana:** It means adultery. A few examples are— Intercourse with the step-mother, mother's sister, mother-in-law, the paternal or maternal uncle's wife, father's sister, a friend's or pupil's wife, sister, sister's friend, daughter-in-law, a woman of the same Gotra, an ascetic woman, a wet-nurse, a woman of a higher caste¹⁷, forceful intercourse with a prostitute against her will, intercourse held in a secluded place against the will of a woman or with an intoxicated woman brought by some trick etc.¹⁸

(f) **Asvāmivikraya:** It means the sale by one who is not the owner. Examples are— Sale of an article borrowed for some festival, an article bailed for delivery to another, stolen property, an article purchased not in the open market, an article purchased for a very inadequate price or at a very unusual hour etc.¹⁹ Besides these, following are connected with crimes-taking back of the gift given to other, fraud in partnership business, non-payment of wages, forsaking a faultless sacrificer by an officiating priest or vice-versa, dispute between a master and herdsman for the breach of contract for service and wages, the violation of conventions, obstruction on the road, dropping ordure on the public road, seizing another's field, garden or house, gambling, a sport carried on with animate objects, disobedience of the king's order, abortion, destruction of growing crops,

rape of a maiden, poisoning, treason, divulging the weak points of the king to the enemy^{20(a)} to serve the king's enemies etc.

It is clear that assault, adultery and theft^{20(b)} were important crimes.

Punishment: Punishment means the penalty imposed for an offence. Dharmaśāstrakāras formulated and advocated different methods of punishment on the basis of scientific and psychological analysis that are similar to modern punishment theories such as (i) Deterrent theory (ii) Retributive theory (iii) Preventive theory (iv) Reformatory theory.²¹ No one was exempted from punishment even the king and his relatives²².

Conditions for considerations on punishment: Before awarding punishments the king who was the fountain head of justice or the judges had to consider the following points:-

The offender's caste, age, qualities, ability to pay, the nature of the offence, the value of the thing, the fact of the repetition of the motive²³, the place and time of the offence, occupation, strength and position of the offender etc.

Methods of punishment: Yājñavalkya²⁴ describes four kinds of punishment in criminal law namely, (i) Admonition (ii) Reproof (iii) Pecuniary punishment (iv) Corporal punishment.²⁵ Manu prescribes²⁶ (i) Vākdaṇḍa (ii) Dhikdaṇḍa (iii) Dhanadaṇḍa (iv) Vadhadanda. They could be used separately or jointly, according to the nature and circumstances of the crime. Pecuniary punishment included fine and forfeiture of property.

Corporal punishment included imprisonment, penal servitude and death sentence. Besides these, banishment and abandonment were also prescribed. Let us mention some important methods of punishment for different crimes.

(a) **Admonition (Warning):** It is the gentlest method of punishment. It is said to the wrong-doer, "You have not done a proper thing."²⁸

(b) **Reproof** (Remarks expressing blame or censuring): It is said to the wrong-doer, "Fie upon you who are a wrong-doer and guilty of adharma."²⁹

(c) **Pecuniary punishment:**

(i) **Fine:** Fine means a sum of money that must be paid as a punishment for breaking a law or rule. Fines were prescribed for almost all the crimes under the titles of Vākpārusya, Daṇḍapārusya, Steya, Sāhasa, Strīsamgrahana, Dyūtasamāhvaya, Asvāmivikraya and others. Fine related cases are innumerable. Some of the important cases are mentioned here.

Abusing a Brahmin³⁰, assault of a woman, magic rites for destroying life, seizing another man's field, taking higher interest, herdsman's negligence about the cattle's entrance into the fields³¹, beating a person, non-execution of works agreed by a person, killing or maiming animals, destruction of trees, harassment of a debtor by a creditor, procuring false witness³², false statement at the time of the marriage of a maiden, false witness, false hood by samantas, paid employee's negligence, death of cattle due to the fault of the cowherd, disobeying the welfare order, harsh abuses, throwing ash, dust,

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mud etc. to others, hurting by hand and feet, breaking of other's wall, deprecators of superior profession, violation of promise³³, forger of scales and documents, a quack posing himself as a physician, adulteration of drugs, oils, molass³⁴ etc., sale of imitation goods as real, resale of goods without buyer's permission, development of prohibited relation, false land document prepared by king's officers etc.³⁵

Fines ranged upto 1000 pānas according to the gravity of cases. Kings were not above law. They were also subject to fines.

(ii) **Confiscation:** Forfeiture of property was prescribed for several offences such as perjure, taking bribes by sabhyas, commission of mahā-pātakas by persons other than Brahmins.³⁶

(d) **Banishment:** It was prescribed for the violation of conventions, officers taking bribes, procuring false witness by money. This was prescribed for Brahmins³⁷, guilty of the gravest offences meriting death sentence.

(e) **Abandonment:** Even the king could not escape punishment. He was to be abandoned for some reasons.

Corporal Punishment and Death:

(i) **Imprisonment and penal servitude:** Imprisonment for some period and for life was prescribed for offences such as striking out both eyes of a man³⁸ for repeating an offence more than three times etc. Penal servitude was also prescribed for some offences.

(ii) **Impalement:** It was prescribed for some major offences such as house-breaking by night³⁹ or for stealing a horse

or for making another captive, for the murder of a Brahmin, for someone who killed a woman, a child or a cow, for snatching of prisoners⁴⁰ etc.

(iii) **Burning and roasting:** These were prescribed for adultery⁴¹, setting fire to growing crops⁴², forests and villages, striking the king with a stick etc.

(iv) **Drowning:** It was prescribed for the breach in the embankment, for causing abortion⁴³ etc.

(v) **Goring by the bulls:** It was prescribed for killing or poisoning one's own husband or own child.⁴⁴

(vi) **Branding:** It was prescribed for offences such as ascetics giving up duties, false dice used by gamblers.⁴⁵

(vii) **Excision:** It was mostly common to the cases of thieves, pick pockets and cut-purses⁴⁷. The excision of the tongue and the male organ was prescribed when a Śūdra abused a Brahmin or Kṣatriya by falsely charging him with some grave sin or for a Śūdra who was guilty of incest, theft of a Brahmin's cow, selling adulterated gold and meat.

According to Dharmaśāstrakāras, punishments may fall upon anyone or more of the following places:-⁴⁸ The private parts, the belly, the tongue, the hands, the feet, the eyes, the nose, the ears, the neck, the thumb and index, the forehead, the lips and the whole body.

Besides these a good number of methods of punishment were prescribed. Some of those methods are mentioned below- Flogging, beating, putting fetters, complete shaving off the head, parading the convict through the streets on ass⁴⁹, devoured by dogs, trampling at the feet of

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an elephant, giving poison, pouring of boiling oil in the mouth and ears⁵⁰ etc.

Death sentence was very common to the cases mentioned under the titles impalement, burning and roasting, drowning, goring by bulls, and excision. It was summed up and prescribed by Vṛddharit for the cases as incendiaries, poisoners, murderers, robbers, bad characters, rogues and those guilty of grave sins.⁵¹ But with the progress of time and civilization there was a gradual tendency towards the reduction of punishment from death to fine.⁵²

Punishment and Women: Special concessions were advocated for women in some cases. They were to pay half of the fine in money which was prescribed for a male offender. They were awarded with the excision of limb in place of death in most of the cases. Yet death sentence was prescribed for poisoning, killing husband, killing own child in womb. But they were exempted from death sentence during their pregnancy.

Punishment and Brāhmanas: Death sentence to Brāhmanas was not pre-

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2. History of Dharmaśāstra, Vol. III, P. XVII-X-VIII, P.V, Kane,
3. *Manu Samhitā*, 2/1
4. *Ibid*, 2/10
5. *Hindu Law-R. Agarwala*, P-15; *Modern Hindu Law- Pars Diwan*, P-30.
6. *Yājñavalkya Samhitā*, 1/4-5
7. *Manu Samhitā*, 8/4-7
8. *Yājñavalkya Samhitā*, 2/210

scribed by all the Dharmaśāstrakāras.⁵⁴ In place of death other methods were prescribed such as-shaving off the head, covering eyes with cloth for the whole of life, exile from the country.⁵⁵ But according to Kātyāyana, even a Brāhman was to be killed if he was guilty of causing abortion, gold-theft or killing a Brāhman woman or a chaste woman.⁵⁶

Conclusion: Many principles and laws which were propounded by the Dharmaśāstrakāras at that time have found place in the modern laws of India. In this age of Democracy and Humanism, the framers of the Indian laws have sorted out the relevancy, of the Dharmaśāstras to the present India. Thus the Dharmaśāstras have been a perennial source of our culture and tradition. In conclusion Henry Maine may be worth mentioned⁵⁷-

“Indian law has the oldest pedigree of any known system of jurisprudence and even now it shows no signs of decrepitude. All this day it governs races of men extending from Kashmir to Cape Comerin, who agree in nothing else except their submission to it.” ■■■

9. *Ibid*, 2/211
10. *Nārada Smṛti*, XVII/18
11. *Manu Samhitā*, 8/280
12. *Yājñavalkya Samhitā*, 2/225-227
13. *Manu Samhitā*, 8/348-351
14. *Ibid*, 9/280
15. *Ibid*, 8/341, 11/16-18
16. History of Dharmaśāstra, Vol. III, P.V, Kane, P-526
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19. *Ibid*, 2/168

20. a) History of Dharmaśāstra, Vol. III, P.V, Kane, P-526
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30. *Manu Samhitā*, 8/267
31. *Ibid*, 8/240
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33. *Ibid*, 2/232-233. *Manu Samhitā*, 8/275
34. *Ibid*, 2/245
35. *Ibid*, 2/295
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38. *Visnu Samhitā*, V-71
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41. *Manu Samhitā*, 8/372
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49. *Ibid*, 8/370
50. *Ibid*, 8/272
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54. *Manu Samhitā*, 8/380-381
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