CHAPTER V

CRIMINAL LAW

When Green regarded the state as not just an end in itself, but a means to fulfill the moral development of man, it implied a deeper belief in the worth and dignity of man. What he rightly emphasized on the part of an individual was – the development of his moral nature – "the fulfillment of a moral capacity without which man would not be man" In the Indian tradition, the elements of moral life were many. Here, too the aim was to develop a moral man. The Dharmasāstras enunciate a code of law that was based on a conception of morality derived from a preconceived notion of good and evil, virtues and vices and that of sin. Indian philosophical systems (darsāna) have attempted to classify the virtues and vices according to their psychological sources. Nyāya makes moha (delusion) the root of all vices. The yoga makes delusion (moha), anger (krodha) and greed (lobha) as the triple springs of vice. Nyaya distinguishes vices into bodily (sārira) oral (vāk) and mental (mānasā). However, there are certain very conspicuous features of the Indian criminal law. The types of offences dealt with indicate an advanced stage of civilization. Grave offences have been distinguished from common crimes. Modes of punishment have been studied in great detail. Most importantly, Hindu criminal law has been evolutionary and adaptive by nature gradually humanizing even the punishments.

In the Dharmasāstras, the premise begins from the fact that Sri (defied prosperity) resides where virtue resides. To be evil or wicked means to be an offender and misfortune alone could be their destiny. Virtues ought to be inculcated and vices ought to be purged from within oneselfs – this was the plea of the smṛṭi writers. The virtues that are named by the smṛtis are truth (satyam), charity, compassion to all living beings, chastity, filial duty, gratitude and piety.
Virtues which are classified as Yama (rules of restraint) and niyama (rules of obligation) indicate what should be done and what should not be done. Among the five Yamas – ahimsa comes first, because in social relations, the earliest possibility is of causing pain to one another.

- Satyam comes after ahimsa
- āsteyam i.e. avoidance of theft comes third
- Purity and
- Brahmachārya, i.e. celibacy

On the other hand, in the Indian philosophical tradition, vices too are inevitable. These vices lead to various crimes.

Manu regards atheism as the first of the six vices to be avoided. The others being hatred (dvēsa) ostentation (dambha), pride (māna) and violence (taikṣpya). Crime owes its origin to these vices or the state of mind. There is, however, no clear cut demarcation of offences into civil and criminal. In the Indian tradition, crime was denoted by the term sāhāsa, expressed as violence. It is, but graded into first prathama, middle or madhyama and the highest or uttama, with a graduated scale of fine for each class.

Sāhāsa which again is an extension of himsa, implies violence that causes pain. Himsā, could be causing pain or cruelty, but not necessarily by violence. Himsā as Aiyangar explains “need not be physical”. The torture of the mind might drive people to madness or suicide more readily than tormenting the body. Any kind of coercion physical or mental is himsā. Prayopavesa, or fasting unto death to compel compliance with a demand, or dhārana is himsā².

Viṣṇu tells that man has three most dangerous enemies called carnal desire, wrath and greed and householders are most vulnerable to fall prey to these, as they have (houses, wives and others) property. Man, being over come by these three enemies commits crimes in highest degree, high crimes, minor crimes and crimes of the fourth degree. Also, crimes causing loss of caste, degrading mixed caste defilements etc. all these lead to threefold path to hell – and man should hence, shun these three vices.
Crimes, originating in sahasa in ancient India are divided into four categories by the smrīti writers like Manu, Nārada, Bṛhaspati and Kātyāyana.

- Vākpārusya or abuse
- Daṇḍapārusya or assault
- Steya or theft and
- Sāhasa or violence

Adultery is considered a great crime in the criminal category. Gambling and betting were crimes too.

In Kauṭiliya’s views, causing physical injury is the most serious offence, causing damage to property less serious and verbal injury the least serious (8.3 23-36) in 11.v. In general, the fines for verbal or physical injury, for offences against an equal in status was increased or decreased proportionately. It was to be double the fine in offences towards superiors in status, half towards those inferior in status, doublie in case towards wives of others and halved if there was a case for diminished responsibility (mistake, intoxication or temporary loss of sense) (3.18, 3.19.4).

However, it is very difficult to ascertain that rate of crime or the level of immorality that might have existed in actual ancient India. Laws were definitely stringent, punitive and prohibitive but the very fact that laws were spelled for the respective categories of crimes indicate the prevalence of such crimes. In Kālidāsa’s plays, the prevalence of a rigorous criminal code suggests of a time when probably crime of all sorts prevailed and was recognized as punishable. Theft, burglary are cited as prevalent. The prerogative of king to announce capital punishment for those accused of highest crimes suggests that criminal class might have necessitated a stringent code of criminal laws.

In the Mrčchakaṭikā, too, there are references to such crimes as theft, burglary, gambling, adultery and political coups.

One interesting piece of evidence is delivered in Fahsien’s account of the character of the Indian people. He says –

“They are of hasty and irresolute temperaments, but of pure moral principles. They will not take anything wrong fully and they yield more than fairness requires. They fear the retribution for sins in other lives and make light of what conduct produces in
this life. They do not practice deceit and they keep their sworn obligations.\(^4\)

What Fahsien asserts about the temperament of the Indian people may be purely subjective. But the fear for retribution of sins is visible as a decalogue to the concept of yama-niyama, by which certain vices lead to destruction of the person as well as the family (kulaṅgaśanam). Even though the belief that the sins of the father may be visited on the children is ancient, its utility lies as a restraint on the moral vagaries of an individual. It makes the entire family take up the moral responsibility for the conduct of each of its member.

Fahsien remarked further that – “As the government is honestly administered and the people live together on good terms, the criminal class is small” \(^5\). However, neither the certainty of the first is proven now living together in good terms can be considered downward puller of crime rate. It may be that the criminal class was not very large.

Certain ideals with respect to criminal laws are discernible in the charter of Viṣṇuśena. For instance, acara 4 of this charter ordains –

\(\text{Sankāya grahanam } n = \text{ asti}\) \(^6\)

This implied that the royal officials should not go in for the apprehension of persons or for taking up a case against one or for seizing one’s things through mere suspicion (sanka) of the crime. This may have been some sort of protection against false allegation or fabricated cases

Likewise, acāra 4 tells –

- \(\text{Purusū} – \text{ aprādhe stī na grāhya}\) \(^7\) – this meant that the wife should not be apprehended for her husband’s guilt

Likewise, when Kālidāsa talks of the concept of “Yathā-aprādha-danṭanam, (Raghuvaṃsa 5.6) the underlying emphasis is on maintaining a balance between or proportion between crime and the punishment for it. Kālidāsa refers to a rather severe code of penal law. But the system of punishment was a thorough and positive code of law in which punishment was graded according to the gravity of the offence \(^8\)
In Mṛcchakatākī, when the court reported the guilt of Āruḍaḍata to the king, there is a reference to Manu’s laws by which a Brāhmaṇa could not be subjected to capital punishment (vādhadanḍa) and could only be banished. However, as an exception probably, the king overruled the decision of the court to impose capital punishment on the—

Defamation (Vākpārusya)

The term ‘vākpārusya’ or defamation literally implies violence by words. Manu propounded the laws for deciding cases of defamation while Yājñavalkya, Nārada, Brhaspati and Kātyāyana elaborated upon him consequently. Nārada remarked that abuse, which is a title of law arises when abusive language in offensive and bad terms is employed against another concerning the native country, caste, family and so forth. 10

Caste distinctions and biases are most visible in the laws for cases of defamation. Punishment for abusing one of the higher castes was severe and Brāhmaṇas enjoyed the most favored position as in other social and legal matters. Manu tells that if a Kṣaṭriya defamed a Brāhmaṇa, he was to be fined 100 panas, a Vaiśya 150-200 panas and a Śūdra shall suffer corporal punishment for the same offence. 11 The disparity becomes more obvious, vice-versa. A Brāhmaṇa shall be fined fifty (panas for defaming a Kṣaṭriya, in the case of) a Vaisya the fine was to be twenty-five panas and in case of Śūdra, twelve panas. 12

For offences, involving twice-born men against those of equal caste, the fine was to be twelve panas and for speeches not to be uttered, double. 13

For a Śūdra, Manu ordains that he who insults a twice born man with gross invective shall have his tongue cut—just because he is of a low origin, 14. Not only this, if he mentions names and castes of the twice born with contumely, an iron nail ten fingers long, was to be thrust red hot into his mouth. 15 If he originally teaches Brāhmaṇas their duty, the king shall, cause hot oil to be poured into his mouth and into his ears. 16

Manuśmṛti writes that one who through annoyance makes false statements about anybody shall pay a fine of two hundred (panas) (V.273). If anybody calls another one eyed, lame or like, he shall be fined at least one Karṣaṇa (V.274). This
punishment probably could not have referred to Śūdra for it is too light. Also, he who defames his mother, his father, his wife, his brother, his son or his teacher and he who gives not the way to his preceptor, shall be compelled to pay one hundred (panas) (V.275). When for any case of abuse, the text tells, the king is the discriminating authority, he should impose lowest amercement for the Brāhmaṇa and middle for the Kṣatriya. For Vaisyas and Śūdras, too, they should be punished according to their castes but a Śūdra’s tongue cannot be cut off (V276-277) in case he abuses a Vaisya.

Yājñavalkya provides the highest fine for him who abuses a Brāhmaṇa learned in the three Vedas, a king or the Gods; if the defamation is against a caste or a community, the fine is of middle amercement and in case of a village or district, the fine is same as for a lower sahasa.

Kauṭūlya distinguished three kinds of defamation. Simple, aggravated defamation and intimidation (3.18.1). Simple defamation was when a person is disparaged about any of his qualities such as his body nature, character, learning, profession (3.18.2) etc. Defamation of physical characteristics could be true (such as you are one eyed, when a person was actually blind in one eye), (ii) false (you are lame, when a person was not), (iii) Sarcastic (what lovely eyes. when a person was actually blind).

The punishment however, depended on the caste of the defamed person. Aggravated defamation was when the defamation was in the form of taunting a person with being leprous, mad or impotent or of low birth (3.18.4). A verbal intimidation was when a person threatens another with injury but is incapable of carrying it out or pleads diminished responsibility (anger, intoxication or loss of sense), the fine shall be 12 panas.

Nārada distinguishes between three kinds of defamation (1) nisthura, (2) aśīla and (3) tivra. The first consists of abuse combined with reproaches, second when worded in insulting language and third causing an expulsion from caste. Like Manu, Nārada too, could not dispense with the caste distinctions with regard to punishments. Brhaspati and Kātyāyana have more or less taken the line of Nārada for rules regarding defamation. Kātyāyana, however, like Kauṭīlya, tells that if the offence is committed due to ignorance, carelessness, rivalry or familiarity and agrees that he would not repeat it, the fine should be
reduced to half. Also, for those who spread false rumors, Kātyāyana enjoins severe punishment like mutilation of tongue (like Kauṭiliya). In Arthaśāstra, it is told that if a prostitute abuses a client, the fine was 24 pañās.

In all, some kind of limited immunity is visible in case of defamation against women. But overall, defamation rules are spelled mostly with regard to the caste hierarchy existent in the society rather than with respect to gender.

Assault (Daṇḍapārusya)

Any attack that causes pain as well as blood, scars etc. in the skin by nails caused by a living thing to another has been declared by the Śrāvasti writers as assault. 17 Manu, Nārada and Brhaspati however, maintain that causing injury to lives of another person with foot, weapon etc. constitute assault and are punishable. Nārada and Brhaspati even talk of three levels of assault, light, middle and heavy. Light assault is when the hand is raised for striking, middle when there is an unexpected attack and heavy when a person suffers injury from the attack. Kauṭiliya talks of three kinds of physical assault –

Touching (including pushing, kicking, throwing things and bodily restraint) hurting and wounding. 18

Manu's laws of punishment for assault depict the caste differences at their maximum – The text says with whatever limb a man of lower caste hurts one of the higher (castes), that limb shall be cut off. 19 Explaining further, it says if he raises his hand or stick, the hand will be cut off or who kicks with his foot, his foot be cut off. Not only this, if a low caste man tried to place himself on the same seat as of high caste one, he was to be branded on his-hip and even banished, or (the king) shall cause his buttock to be gashed. 20 Such verses not only seem ridiculous but reflect the magnitude of the sting of the caste-mindset. For wounding others, (where blood comes out), the offender, ordains Manu shall be fined one-hundred (panas), he who cuts a muscle, six niśkas while one who breaks a bone was to be banished. 21 If a blow was stuck against men or animals in order to give them pain (the judge) should inflict a fine in proportion to the pain. 22 Also, in case of a wound inflicted, the assailant should pay not only the fine but the expenses of the cure, too (to the king). 23
For injuring trees, Manu has spelled that fine must be imposed according to the usefulness of the trees. In case of leather, or utensils of leather, of wood or of clay, the fine was to be five times their value as also in case of damage to flowers, roots and fruits. For the failure of a driver, if a cart turns off the road, the owner shall be fined two hundred panas if damage is done. If the driver is skilful, the occupants of the carriage too would pay a fine each of one hundred panas.

If a man, says Manu, is killed, his guilt is same as a thief, (i.e. he must pay the tightest amercement or 1000 panas), for large animals, it is half of that for injuring small animals, the fine shall be 200 panas while that for birds about 50 panas, for donkey, sheep, goat, the fine shall be 5 masas but for killing a dog or pig, the fine was to be one masa. One who strikes from the back, his guilt is also like that of a thief.

One verse of Manu however raises the big question related to gender equality. A wife, a son, a slave a pupil and a (younger brother) of the full blood, who have committed faults, may be beaten with a rope or a split bamboo. Here, what is the ground of pairing a wife as equal to son or a slave or a pupil or younger brother is not clear. The only commonality visible among them is that they are all subservient to the man who they belong. The sanction to beat or assault them is not only queer but absurd. Moreover, the son, the pupil and the brother who are deemed more independent than wife could be beaten seems illogical and improbable (unless they were too minor to retaliate).

Bṛhaspati recognizes three types of injuries. Scattering with ashes or like, beating with hand etc. is the first type of assault, food which the fine is one masa. Like Manu, Bṛhaspati and Kātyāyana (V.782) too assert that in certain assault, punishment should be in proportion to the pain caused. Bṛhaspati ordains that if assault results in death of the person hurt, capital punishment is awarded. Like Manu, he too ordains that the assailant should be responsible for the expenses of the court. Nārada provides that if a person through arrogance spits on a superior, the king should cause both the offender’s lips to be cut off. Another important provision in Nārada says that no person that then the perpetrator of the crime is liable to punishment, unless he happens to be a party to the commission of the act.
Kauṭiliya is more meticulous with the monetary fines for assault. Fine was doubled or halved for assaults against person of superior or inferior varnas (3.19.4).

- For pushing with hand or throwing -3-12 (depending on navel, above it or head) mud, ashes or dust.

- For spitting, kicking or throwing impure things. - 6-12 ("') paṇas.

- Throwing vomit etc. -12-48 paṇas (3, 19,2,3)

- For holding and restraining - 6 paṇas or lowest s.P. (3.19, 5,6)

- For hurting with hand -3-12 paṇas

- For kicking with foot - 6-24 paṇas

- For wounding -24-28 paṇas

- While if the injury was to thigh, Middle amercement cost of treatment

Neck or eye – affecting speech, movement or eating

For striking anyone with weapons, if it was a crime of passion, the fine was to be 200 paṇas, when intoxicated, the fine was cutting of a hand, while assault resulting in death was to be punished with death (4.11.3-5). For injuring any organ, the fine was to cut off the same organ of the offender (4.11.25) while for making some one blind in both eyes, the punishment was that, the offender too be blinded or 800 paṇas fine to be paid. In case a person of high Varna beat or kicked a guru, the fine was to cut off a hand and a foot or 700 paṇas fine. In case of a prostitute causing physical injury to a client, the fine was 48 paṇas. For causing an abortion by physical blow, the fine was of the highest amercement, while for arson or setting fire to pasture, field, house or productive forest, the punishment was to be death by burning.
Kātyāyana provides that, the ideal punishment for the untouchables, gamblers, slaves, mlecchas, or persistent sinners and for those who are born as a result of unions in reverse order of castes is whipping and not any monetary payment. Kātyāyana does not exempt even a teacher who assaults a pupil with anything other than a creeper and causing pain. In such a case, the father may lodge a complaint against the teacher.

Brhaspati provides rules of procedure for determination of the offence of assault. If a person is beaten up in a lonely place or when no wound is visible the offender is to be detected by circumstantial evidence of an oath. Likewise, in case of injury or assault in the interior of a house or in a wood or at night and blood is traced, witnesses shall not be examined. The only lone case, where the guilt of an assailant may be absolved is when the act is in self defense.

The charter of Visṇuśena talks with reference to assault in more than a couple of its acaras. Ācāra 38 says –

\[ \text{Vākpāruṣya} - \text{daṇḍapāruṣyayōh vinayē rūpakāh shat = sa - pādāh.} \]

i.e. the fine for the offence of defamation and assault (or, rough behavior) was six and one-fourth silver coins. Here, the fine seems to be same for defamation and light assault. In the very next ācāra (39), it says –

\[ \text{Kṣhata darsanē rūpakāh ashtatvārimsat} \]

i.e. In the case of danda - pārusya involving visible injury or infliction of wounds, the fine was 48 silver coins. There is a similar reference in the Viṣṇusmṛti, V.66-67.

Sōnitēna vinā duhkham - utpadayitala dvātrim - sat- pārāh, saha sōnitene chatuhshastim. 

The charter, an ācāra 6, tells – Kshem – āgni – samuthānē chhalō na grāhyah.

Chhalō, which originally means pretext may have meant ‘a careless, declaration', in the smṛti literature while ‘Kshemāgni’ implies a sacred fire kindled on the occasion of marriage etc. This ācāra, may mean that no half hazard allegation should be entertained against one’s neighbor for the burning of one’s house when the accused says the conflagration resulted from the sacred fire. If an ordinary meaning of ‘Chhalō’ is taken, the acara
may refer to, a case involving the burning of a neighbor’s house in which such a plea that conflagration resulted out of the sacred fire was not acceptable.

On cutting of the ears, *Karna trotana*, the charter, speaks in two acharas, No.7 and No.37. No.7 says –

\[ Svayam hrasita Karṇe Chhalō no grāhyah. \]

i.e. there was (1) no pretext for a man who was himself responsible for cutting a bit from a neighbor’s ear or that (2) no careless declaration was acceptable from a man, if he cut a bit from his own ears.

In Ācāra 37, it is mentioned thus–

\[ Ullambane Karnā trotana cha vinayo Rupākāh saptavimsat (śatih) \]

The word, ‘ullambane’ is explained in the lexicon as ‘leaping over someone’ but Kautilya’s Arthasastra (1 V, 8) uses it to indicate hanging, which could be applied to the present case. *Karna trotana*, i.e. “Cutting off a bit from some one’s ear was a crime and the fine was 27 silver coins.

The charter, also talks about the offence involving *taundika* (biting of crops by mouth) by the cows. The fine for such offence was five *vimsopakas*. However, for an offence of *taundika* by a she-buffalo, the fine was ten *vimsopakas*, i.e. one-half silver coin. Yājñavalkya prescribed four masas for the offence.

**Theft (Steya)**

By punishing the thieves, Manu ordains the attainment of fame by the king and the prosperity of his kingdom. The text of Manu says, “A king who (duly) protects (his subjects), receives firm each and all the sixth part of their spiritual merit, if he does not protect them, the sixth part of their demerit also (will fall on him). The task of protection endowed on the king has been entailed by Manu and compared as equal in merit to that obtained from reading the Veda, by sacrificing by charitable gifts, (or by) worshipping (Gurus and gods) when the king, says Manu protects the kingdom according to sacred laws, it is a great
sacrifice on the part of the king while if he does not afford protection and takes his share, he sinks into hell.⁴¹ (Also, if the king does not punish the thief, he incurs the guilt of the thief upon himself.⁴²)

Manu advises three modes of punishment for the wicked (wicked here means thieves for Manu is dwelling here on the topic of theft) — by imprisonment, by putting them in fetters and by various (kinds of) corporal punishments. The king could pardon one in pain and thus he exalted in heaven, says Manu. But he should never be arrogant of his kingly state and not pardon those who deserve. Manu says, he should forgive the litigants, infants, aged and sick people.

In Yājñavalkyasūtrī, there is reference to a more developed penal code and interesting rules of procedure for dealing with thieves, actual and suspected. He advises the king to restore the stolen property and punish the thieves by different modes of corporal punishment.

In Arthatāstra, robbery is dealt with in Book 3 and punishment for theft in Book 4. L.N. Rangarajan mentions that two important aspects of theft (investigation of reported theft and a graded set of punishment for theft) are covered in (4.6) on arresting suspects and (9 10) on payment of redemption money in lieu of mutilation.⁴³ The text describes robbery with violence as seizing forcibly a person or property in the presence of the owner. If the owner is absent, or if the seizure is indirect (e.g. by fraud) it shall be considered theft (3.17.1.2).

The text elucidates that the school of Manu holds the fine, in case of precious objects, articles of high or low value and forest produce, shall be equal to the value of the goods seized. Kautilya propounds that punishment must be commensurate with the offence and agrees with the scale recommended by other teachers (3.17 3-5).

The school of Brhaspati advocates increasing the fines for one who instigates another to commit robbery with violence. Kautilya agrees subject to the condition that only the basic fine shall be levied if the instigation was done in a moment of diminished responsibility such as anger, intoxication or passion,⁴⁴ (3.17.11-14). The text also tells that when a territory is newly
acquired by conquest, thieves shall be removed from their usual places of residence and dispersed.

Nārada’s text (as preserved in the commentary of Asahāya) does not deal with the topic of theft. 45

Bṛhaspati considers theft as among the few species of sāhana. According to him and Kātyāyana, thieves are of two kinds (1) open and (2) concealed. Nārada, too dwells that open thieves are the makers of counterfeit weights and measures, receivers of bribe, gamblers and prostitutes. Bṛhaspati, whose list is more elaborate includes traders, quacks, gamblers, corruptible judges, cheats, perjured witnesses etc, open thieves, 46 house breakers, highwaymen, robbers, thieves of clothes are considered secret or concealed thieves, 47 Bṛhaspati ordains that judges who pass unjust sentence, persons living by bribe and such other persons as betray confidence on them are as good as thieves and deserve punishment.

Viṣṇu speaks that he who has stolen a goat, or a sheep shall have one hand (cut off) 48 A stealer of thread cotton, cow dung, sugar, snow milk, mil, butter milk, grass, salt, clay, ashes, birds, fish, clarified butter, oil, meat, honey, basket work, canes of bamboo, earthenware or iron pots, shall pay three times their value as a fine (V 83). Thieves should be compelled to restore all stolen goods to the owners and after that shall suffer the punishment ordained for them (V. 89-90).

Manu speaks about the guilt if theft with reference to caste distinction. In case of thefts the guilt of Śūdra shall be eight fold that of a Vaiśya sixteen fold and that of Kṣatriya two and thirty fold that of a Brāhmaṇa, he says shall be sixtyfour fold or hundred fold or even twice four and sixty fold. So to say, the guilt of the Brāhmaṇa is highest in case of a theft. Quilt, here implied that the offender had to pay fine in proportion. Some specific punishments entailed in Manusmṛti are as follows – One who steals more than two kumbhas of grain shall be inflicted with corporal punishment (V.320). So also for stealing over a hundred (palas) of articles sold by weight (i.e.) of gold, silver and so forth, and of most excellent clothes (V.321). For stealing more than 50 palas, the hands (of the offender) shall be cut off while in other cases, a fine of eleven times the value be imposed (V.322). For stealing men of noble family and especially women, ordains Manu of their precious gems. The offender deserved corporal (or
capital punishment (V.323) for the theft of large animals, weapons or medicines, the king could fix the punishment after considering time and the purpose (for which they were destined) (V.324).

Likewise, for stealing belonging to Brāhmaṇas, piercing the nostril of a barren cow and for stealing cattle (belonging to Brāhmaṇas), the offender was to lose half his feet. Kautilya, differs here and prescribes a monetary fine worth the value of animal add to the equal amount as fine for stealing cattle, deer, birds etc. (4.10.3). Further, for stealing thread cotton, cow dung, molasses, bamboo vessels, salts, oil, fish, birds, honey etc. or cooked food, the fine was to be twice the value (of the stolen article) (V.326-329). For agricultural produce, vegetables, fruits etc. the fine was to be one hundred panas. Kautilya, however, proposed a fine of 200 panas for the theft of agricultural produce (4.10.6).

Manu mentions two more interesting assertions. One that neither a father, nor a teacher, nor a friend, nor a mother, nor a wife, nor a son, nor a priest must be left unpunished by a king, if they do not keep within their duty (V.335). Also, where another common man would be fined one karśapāṇī, the king shall be fined one thousand (V.336). In other words, considerations of relations should not be allowed to interfere with punishments when the king meted out punishments for theft, no matter if they were the parents, children or priest. The highest responsibility, however, was of the king, where common man’s crime was equivalent to one that of king was to be one thousand times more.

In Kautilya’s Arthasastra, it is mentioned that for robbing a prostitute of her belongings or ornaments, a fine eight times the stolen amount was to be prescribed (2.27.23). If a soldier stole weapon or armor highest punishment was ordained (4.11.23). Also, for theft in holy place mutilation was ordained by the text (4.10.1). For concealment or embezzlement of temple property, the fine was blinding of both the eyes along with a monetary fine of 800 panas (4.10.13). Also, for theft of temple property such as images, cattle, persons, field, houses, and gems etc. the punishment was nothing less than death. Death punishment was also prescribed for stealing a herd, theft of weapons or armor by one who was not a soldier, theft by breaking into treasury etc. (4.11.15, 4.11.22, and 4.9.7). As for helping a thief (or adulterer),
the fine was cutting of the nose and an ear or a fine of 500 panas. For hiding a thief, the fine was same as that for the theft (4.8.6).

Kātyāyana too mentions that "Those who supply food to thieves, those who give them fire and water, those who purchase (stolen) goods from them and receive (stolen) property from them and those who hide them - these are all declared to be liable to the same punishment (as the thieves themselves)." *^ 49

Kātyāyana also emphasizes on the procedure to be adopted in case of theft. Whenever anything is stolen of a person in one's kingdom, the king must restore it back (Viṣṇu (III, 65, 66) also has a similar provision). The king should search the thing lost and if found (after the price is paid to the owner), he should retain it himself. In the absence of the article, the king should pay the price; otherwise, the king incurs sin. Even if the king was to restore the thing or he could make the thief pay as per his (king's) pleasure. 50 Also if anything was stolen from the houses in a village, (the king) was to make the thief catchers pay it (to the owner). He could make the guarding officers and warden pay the price of the stolen article if the thief was not found. The property stolen in a village was to be restored by the village headman come to that stolen in the forest by the king but if the theft occurred at a place other than the forest, the officer appointed to catch thieves was to restore the property or its price. 51 These thief catchers were the officers appointed to trace and catch the thieves. In the inscriptions, the officer who matches the description is called ‘cauroddhāranika’ (mentioned in the inscription of Dharasena II of Valabhi).

Likewise, Nāgarika; the Nāgaraka of Abhijñānākuntalam was perhaps like the kōstapala of later time, the head of the establishment of the guards of the city. We come across this official in the Sākuntala leading a criminal to the court of justice with the help of his guards (raķṣināh). In the Vikramorvaśi, he seems to be connected with the city administration. There again, he is entrusted with the work of police by the king who commands him to hunt after the winged offender (a bird which had flown away with a gold chain of the king) when at evening, it goes to its resting place. 52

B.S. Upadhyaya, who has studied India in Kālidāsa, remarks that despite the severity of the criminal law thieves...
and burglars (gandabhedaikāh) and wayfarers were not unknown and the poet's assertion that theft, not being in practice was to be found, in books alone (Raghuvamsa, I-27) is sadly exposed to criticism unless it be supposed to refer to an ancient regime which it does.

Kalidāsa does refer to a severe code of penal law. As evidenced in the poet's writings, the offence of theft was punishable with death.

The fisherman of the Śakuntalā was accused of theft alone of the royal jewel for which he was considered doomed to destruction by snake, dogs or vultures (This seems similar to Manu's provision of capital punishment for theft).

In Mṛčchakatika, too, there is reference to an episode of theft. Vasantasena, the courtesan intentionally deposits her ornaments at Cārudatta's house in order to take ahead their love story. The ornaments are stolen from Cārudatta's house, which was once opulent but now poor.

Cārudatta is afraid that people may not believe in theft and will suspect him on account of his property. He even sends his wife's precious Rātnāvalī to Vasantasena. He had entrusted the responsibility of ornaments on friend Maitreya but when the latter told him to place the ornaments in the inner apartments, Cārudatta refused on the grounds that it was the jewelry of a public women. The theft however, over her is a dramatic, interlude to shed light on the characters of Cārudatta, his wife, Sarvīlāka and Vasantasena rather than as a reference to a crime as such. There is no explicit mention, of the punishment, although the handing over of 'Rātnāvalī', suggests the compensation for the theft.

Violence(Sāhasa)

Manu opined that the king in whose town lives no thief, no adulterer, no defamer, women guilty of violence, and no committer of assaults attains the world of Sakra (Indra). The text tells that he who commits violence must be considered as the worst offender, (more wicked) than a defamer than a thief and than he who injures (another) with a staff. Sāhasa,
violence, comprises according to Medhatithi, robbery, rape, arson, cutting clothes or forcibly destroying property.  

Nārada gives a more conclusive elaboration of the term. He defines ‘Sāhasa’ as an act of force performed by persons inflamed. Heinous crime are of four kinds, viz. man-slaughter, robbery, an indecent assault on another man’s wife and the two; types of insult, abuse and assault. Offences could be of first middle or highest degree. For not very serious offences of first degree, such as damage to crops, water, or agricultural implements, fine was up to a hundred panas. For offences of middle degree, such as spoiling clothes, food or drink of others, the fine was up to 500 panas while fine for highest type of offences causing injury to human life or property was, up to 1000 panas along with corporal punishment, confiscation of property, banishment from the country and even mutilation.

Bṛhaspati prescribes caution in arriving at decision about proof in heinous crimes, especially manslaughter. Viṣṇu clubs the killing of Brāhmaṇa with the offence of drinking spirituous liquor, stealing the gold of a Brāhmaṇa and sexual connection with a Guru’s wife as high crimes. Viṣṇu says that Killing a Kṣatriya or Vaiśya engaged in sacrifice, or a women in her courses or a pregnant women, or a women (of the Brāhmaṇa caste who bathed after temporary uncleanness or killing an embryo of an unknown sex or one who comes for protection was equivalent to the crime of killing a Brāhmaṇa. Likewise he enunciates that giving fake evidence and killing a friend were crimes equal to drinking of spirituous liquor.

Kātyāyana has described Sāhasa as an act of dare with force. A person charged with violence should establish his innocence by oaths (and ordeals). If several men violently beat one man to death, the one who strikes the fatal blow is held as the murderer. No blame attaches to him who kills a wicked man ready to kill another. Kātyāyana describes an ātātāyin as a desperate fellow and entails that if the ātātāyin belongs to a higher caste, killing him is not proper, “Killing is prescribed for a sinner of a lower class. This is the view of Bhṛgu”.

He explains an ātātāyin, as one who is about to use his sword, poison or fire, whose hands wield a drawn bow, who kills by incantations as per the Atharvaaveda, who is a backbiter conveying to the king, who assaults author’s wife and who is bent on fault finding (V.802-803). These wicked men rob a
person of his fame and character and deprive one of dharma and artha (V.80). Even one who kills animals having sharp claws, horned animals are called atatayin (V.805).

Kātyāyana makes a deviation in assertion about crimes committed by a Brähmana when he tells that - “Even a Brahman deserves to be killed if he be guilty of abortion, if he be a thief (of gold), or if he strikes as Brahmana with a sharp weapon or if he kills an innocent woman” 67 Otherwise, elsewhere, a Brähmana has overall been exempted from capital punishment or death; even for the highest crimes, he could at most be banished or exiled according to the smṛti jurists.

Killing a woman (strihatya) was considered at great sin. In the Rāmāyana, Rāma himself tells Laksmana (Bāla Kāṇḍa, 26-12). 68

Nāhyenāmutsahe hantum strisvaḥśāvena raksitām. “Being protected by her feminine nature, I have no heart to kill her (Ayodhyā Kāṇḍa, 7821). Likewise, Bhārata tells Satrūṇa -

Avardhyāḥ sarva bhutasām pramadhāḥ “Women ought not to be slain by any creature”. Likewise, Hanuman refers to the special hell reserved for the slayer of a woman,
Ye ca stṛighātinam loka vadhyaisca kutsitāh (Yuddha Kāṇḍa, 81-23).

However, Rāma following the behest of Visvamitra killed Tātaka. This act of Rāma is defended by scholars in the light of relatively pragmatic Vālmikian Dharma. Three arguments are advanced
First, Tātaka was a murderess, who had murdered a number of holy persons (Bāla Kāṇḍa, 25-16, 19) and it was the duty of the king to protect his subject,
Second, Visvamitra tells Rāma, that Indra, too killed a woman and he should not consider for a woman who is a murderess and Third, Rāma must obey the behest of his father as Parasurāma killed his mother on receiving order from his father.
Moreover, Rāma’s act was an act of self-defense and hence, fully justified.

In Manu and Viṣṇu too, it is entailed that - “By killing an assassin, the slayer incurs no guilt, whether (he does it) publicly or secretly, in that case fury recoils upon fury”. 69
In the Mṛcchakatika, too, the murder of women is regarded as a heinous crime. However, law which made an exception if the murderer was Brāhmaṇa as ordained by Manu was not applied here. Here, we have a deviation from the established norms. The king puts aside the request of judge to exile Cārudatta and confirmed the death sentence to set an example.

**Adultery (Śīrśamgrahaṇa)**

The state was presumed to be a protector of the people against all sorts of crimes. All the smṛti writers have extolled and emphasized upon the role of the king in preventing the crime. One such verse in Viṣṇu tells, “A king in whose dominion, there exists neither thief nor adulterer, nor calumniator, nor robber nor murderer, attains the world of Indra.”

Adultery has been deplored by all the smṛti writers unanimously. It was seen as great sin strictly punishable and requiring penances. Various possible relationships have been examined and rules forbidding them hence been laid down. The scope of the term itself was very elaborately deliberated upon as also the punishments for it.

Manu’s harsh verses on adulterer begin with this verse - “Men who commit adultery with the wives of others, the king shall cause to be marked by punishments which cause terror and afterwards banish.” In the very next verse, Manu puts forward his logic for such pronouncement when he says - “For by (adultery) is caused a mixture of the castes (varṇa) among men, thence (follows) sin, which cuts up even the roots and causes the destruction of everything”.

Manu’s definition of adultery (samgrahaṇa) is wide and elaborate. If a man formerly accused of such offences with another man’s wife, he is liable to be fined with the lowest amercement. But if he is an unaccused person, then no guilt is incurred. If one addresses a wife of another at a tirtha, outside the village in a forest or at the confluence of rivers, he is taken as an adulterer, offering presents (to a women), romping, touching her ornaments or dress, sitting with her on a bed or touching invalidly or with mutual consent are all considered adulterers acts by Manu. Except for the wives of actors and singers, who Manu believes live in their wives’ intrigues, let no man converse with wives of others lest he be fined one suvarna.
Manu seems markedly harsh in pronouncing punishments for adulterers, representing an aspiration for a higher ideal of moral code. The text of Manu says that a man who is not a Brāhmaṇa ought to suffer death for adultery (samgrahaṇa), that is to say that punishment for adultery should be death, except for the Brāhmaṇas. In this very verse he tells that wives of all four castes should be carefully guarded.  

For violating an unwilling maiden, the adulterer should suffer corporal punishment instantly but if he enjoys a willing maiden he may not suffer corporal punishment, if both were of the same caste. In a queer caste, tainted verse, Manu tells that if maiden makes advances to a (man of) high caste, he shall not take any fine but if she courts a man of low (caste), let him force to live confined in her house (V.365). On the other hand if a man of low caste indulges with a maiden of the highest caste, he shall suffer corporal punishment (V.366). If this person addresses a maiden of equal caste, he shall pay nuptial fee, if her father desires. If a man defiles a willing maiden of equal caste, he would pay fine of 200 panas in order to deter a repetition (V.368). But if a man forcibly defiles a maiden, he would pay not only a fine of 600 panas but two of his fingers should be chopped off (V.367). Likewise, if a woman violates a damsel, her head shall be shaved off, two fingers cut and she should be made to ride on a donkey through the town.

The harshness of punishment for a wife adulterer is not less pronounced. Manu says -"If a wife, proud of the greatness of her relatives or (her own) excellence, violates the duty which she owes to her lord, the king shall cause her to be devoured by dogs in a place frequented by many". As for the male offender, the punishment seems to be the most stringent - "Let him cause the male offender to be burnt on a red hot iron bed, they shall put legs under it (until) the sinner is burned (to death). "Rules and punishments were more vigorous for Brāhmaṇa offenders. If the offence was with the lowest caste' female, fine imposed on Brāhmaṇa was one thousand (V.385).

Manu ordains tonsure (of the head) for a Brāhmaṇa offender instead of capital punishment, but for the same crime, men of other castes were to suffer capital punishment. Taking it further, he forbids the king to ever slay a Brāhmaṇa even for all possible crimes. He could at most be banished. In fact, he
pronounces the killing of a Brāhmaṇa as the highest crime in the context and continuation of above verses (V.381).

Kauṭiliya’s Arthaśāstra mentions that a kinsman or a servant of husband who is away on a long journey shall keep an adulterous wife under guard till the husband returns. If on return, the husband does not raise any objections, neither the woman nor her lover shall be prosecuted, otherwise, the wife shall suffer mutilation and the lover death. Anybody who conceals adultery or catches an adulterer and declares him to be thief (to save him of the punishment of adultery) shall himself be punished. No one should take bribe to allow an adulterer to escape. Kauṭiliya also mentions gradation of monetary punishments for misconduct on the part of man or woman. If a wife was caught in adultery, the punishment which Kauṭiliya ordains is mutilation by cutting of nose and an ear or 500 panas; same mutilation for the lover was also prescribed with a fine of 1000 panas. For helping an adulteress, the fine was 900 panas or mutilation by cutting off both feet and a hand.

Kauṭiliya has dealt with other sexual offences and punishments for them elaborately. Mainly the punishments pertain to defloration of a virgin, rape, prohibited relationships. Defloration was considered a serious offence and especially of a minor (4.12.1-7,20-29). Even a prostitute was not to be enjoyed against her will, which was classed as rape. The list of prohibited relationships was explicitly mentioned—for instance, sexual relations with wife of a teacher were prohibited, relations between ascetics or relations with kin relations like aunt, daughter, sister, a daughter-in-law. The rigorousness is especially noticeable in the enunciation that if any woman permits such a relationship she should be sentenced to death (4.13,31). Person of lower caste was prohibited to have incest relation with women of higher caste.

If a person had such relation with the queen, he should be boiled alive (4.13,33). The punishment for rape varied in monetary terms except in case of an Arya minor, when the punishment declared was death. For those who violated caste norms in having incest relations, punishments like branding, mutilation or death were prescribed.

Nārada (ṣripumṣa V.91) says when a woman commits adultery, her hair shall be shaven, she shall have to lie on a low
bed shall receive bad food and clothing and her occupation shall be the removal of sweepings of her husband's house. Dr. Kane has interpreted the adultery laws of smrti with comparisons from the English law. He tells under the English law, if the wife commits adultery, the husband's obligation to maintain her ceases altogether unless he had connived at it or condoned it.79 A penance is prescribed for women who commit adultery. Kane studies that the human character of the legislation of the Indian sages is seen by the fact that even for adultery, they do not allow the husband to drive the wife out of the house and to abandon her. Kane asserts that the husband possessed some kind of correction power over the wife as those possessed by a teacher over pupil or a father over son, viz he could administer beating with a rope or thin piece of bamboo on the back but never on the head. Kane considers this as comparable to the common law of England.

However, what appears from the entire study is that punishment for adultery and rape varied according to the caste of the man or the woman, was different for men and women and variation was also considering the fact whether the women was a maiden or married. If a Sudra committed this offence with the Brāhmaṇi, it was the highest offence of adultery. A Brāhmaṇa committing such offence was banished while a Sudra in the same place was prescribed death. Violating a maiden was greater sin than relation with a married woman. If a woman was guilty she was not to be exempted or shown any mercy. Both Manu and Katyāyana prescribed her devouring by dogs. The paramour was however, to be killed. Rules and punishments are most elaborately and rigorously dealt with in the Arthashastra rather than the smṛtis. Smṛtis underline the seriousness of the offence by all means. Punishments were rigorous both for men and women and no preference is exhibited in the favor of any particular gender.

The instance of adultery surfaces in the epic Rāmāyana in the context of three women. But it seems, all the three cases were pardonable and the women in question were never questioned for their character.

Gambling and Betting

Recognized as criminal offence, gambling and betting seem to have widely prevented in early India as can be gathered
from the instances in epic, plays or the Arthaśāstra. Manu entailed that gambling and betting amount to open theft, the king shall always exert, himself in suppressing both (of them). 80

Manu explains that “When inanimate (things) are used (for staking money on them), that is called among men gambling (dyuta), when animate beings are used (for the same purpose), one must know that to be betting (samāhvaya)” 81. He further says that, “In a former, Kalpa this (vice of) gambling has been seen to cause great enmity, a wise man, therefore, should not practice it even for amusement”. 82 He advises the king to corporally punish all those (persons) who either gamble and bet or afford (an opportunity for it), likewise Śūdras who assume the distinctive marks of twice born (men).

In the Arthaśāstra, of discussion is there on the seriousness of vices springing from excessive desire such as addiction to hunting, gambling, women and drink., Piśuna considers hunting a worse vice than gambling for anything can happen in a hunting while in gambling, experts like Jayatśēnā or Duryodona win (8.3.39-41). 83 Kauṭiliya disagreeing remarks that in gambling, one party has to lose as is known from the stories of Nala and Yudhiṣṭhira. It becomes a source of enmity. A gambler never knows how much wealth he has got, tries to enjoy wealth which he has not got and loses it before he can enjoy it.

Kauṭiliya says that a gambler can be reformed but not so a man who lusts after women. Gambling is worse than addiction to drink. Gambling with one’s property and betting on animal races leads to a win for one and loss to the other. Gambling promotes factionalism and it is the most evil of the vices, because it destroys the ruling class by depriving them of their ability to govern. 84

From the play Mṛćchakaṭiṇa, it appears that gambling was a well organized and somewhat approved social pastime. There were gambling houses, chief of which was called ‘sabhikā’. There use to be association of gamblers (dyutakāra mandali) which promulgated its own laws and gamblers were bound by them. It also seems to have had royal sanction, for the chief was not only the king’s messenger but also had an independent power to punish the defaulters. It was a game for the rich but nearly always lured to poor to try their luck. As Samvāhaka says in the
play - “The sound of the dice throw (kattasabda) sways a penniless heart as the sound of the drum stirs the heart of a king fallen from his throne. Gambling is a steep fall from a precipice and I know, I shall not play, but the rattle of dice is as sweet as cuckoo's voice and draws my mind” 85.

Vāsantasenā had the entire equipment at her house and Cāruḍatta does not hesitate to state that the deposited ornaments were lost by him in gambling. 86

The play mentions that for failure in paying the gambling debt, the debtor had to face harsh treatment. Samvahaka ran for his life, did every possible trick to dupe the master of the gambling house, but he was pursued and persecuted. Act II (12) mention that a defaulter was suspended with his head down for a whole day or dragged along the street or wild dogs let lose on him. These cruel tortures which a defaulter was likely to face suggest the severity of the punishment entailed for an offender of gambling debt.

In the Yājñāvalkya śṛṃti, it is mentioned that persons gambling with false dice or other instruments shall be fined and banished by the king. 87

Miscellaneous Crimes

Manu has listed some thirty verses spelling miscellaneous rules in Chapter VIII. Many of them are worth bringing to study verse 389 says - “Neither a mother, nor a father nor wife, nor a son shall be cast off; he who casts them off unless guilty of a crime causing loss of caste shall be fined by the king 600 (panās).” Here, to cast off implies to deny the due maintenance to these relations and the rule does not apply to a person who has already committed a crime that led to his being ostracized from the particular caste.

A high code of behavior was expected of the Brāhmaṇas, Manu says, Brāhmaṇa should entertain his neighbors or pay a fine of one masa (V.392). If dispute occurs between them, the king should amicably mediate. Especially, a srotriya was expected to be more virtuous.
For the traders, Manu says, let the king confiscate the whole property (of a trader) who out of greed exports goods of which the king has monopoly or (the export of which is) forbidden. Also he who avoids a custom house (or a toll), he who brings or sells at an improper time, or he who makes a false statement in enumerating (his goods) shall be fined eight times (the amount of duty which he tried to evade).

One verse tells that a Brāhmaṇa could employ a Kṣatrya or Vaiśya, if distressed for livelihood (V.111) but he should not employ men of twice - born castes against their will to do the work of slaves otherwise, he will be fined by the king 600 panas. A Śūdra was however, deemed to have been created by the self existent (svayambhū) to be slave of a Brāhmaṇa.

Another verse puts the wife, son and slave on the same plain and says “these three are declared to have no property; the wealth which they earn is (acquired) for him to whom they belong”. Probably what was implied was that these three had no rights to dispose off their property independently. Manu concludes the legal provisions by telling that a king who brings all these legal business, and removes all sin, reaches the highest state (of bliss), the king however, remaining the upholder of the laws ordained or prevalent.

The charter of Viṣṇuśena has references to certain miscellaneous rules. Ācāra 2 of the charter says -

‘unmāro-bhēdō na karanīyō rāja - purushena’; The royal officials were asked not to break open or violate the unmara, the exact meaning of which is nōi known. It may be related to Gujarati umbro which means ‘threshold’ or door of a house. Viṣṇu (V, 116) prescribes a fine of 100 paṇās for a ‘sa-mudra-griha-bhedeke’ (one who breaks open the sealed door of a house), Kauṭilya prescribes 48 panas as the fine for same offence (Arthaśāstra, III.20).

‘Ācāra 11 of the charter tells a rule that ’samant - āmātya = dutānam = anyēshām ch = ābhypāgame sayāṇī - āsana - siddhānnam na dāpayēt, i.e. when a subordinate chief, an officer or an army of the king came to a village, the inhabitants there of should not be compelled to supply beds or couches, seats and boiled rice’.
Some rules were laid down for guilds in this charter. Acāra 12 says - Members of different guilds should not be allowed to flock to the same market (sarva - srēninām = ēk āpanako na dēyah). The idea was probably to see that different guilds did not occupy the same markets. The next acāra says all the guilds should not be compelled to pay ‘khōva’ which may have meant ‘share’ of the lord of the market (aṭṭa pati - bhāga).

Acāra 20 says -

Prāpaṇūraka – gō pālah rājā - grahēṇa na grāhyah. 91

Prāpa - pūraka is a person entrusted with filling the cisterns with water in a place for watering cattle or supplying water to travelers. Such persons or milkmen were not to be apprehended or recruited for free labor on the king’s behalf. Likewise acāra 24 says - varshāsu sva-vishayāt ley ārtham - āgataka - karshakāḥ svāminā na grāhyah, i.e. cultivators coming out of areas for sowing seeds during rainy season were not be apprehended or engaged by king as free labor.

Acāra 32 tells that in case of fraud in delivery of raj-argghikā (periodical offering made to the king), the officers engaged were liable to a fine of three and 1/4th silver coins and the fine could not be reduced even when there was a reasonable excuse. 93

Acāra 33 says an important provision. It says -

‘Mudr - āpachāre vinaye rūpakāḥ shat = sa pādāh saha dhārmikēṇa. 94

Mudr - āpachāra is the crime of using counterfeit coins) (or misuse of official seals, the fine for which was six and one fourth silver coins and no excuse for reduction was allowed. 95

Another Acāra 34 says -

‘sthāvara’ - tya (vya) vahāre sāmantaih avasitasva vinayō rūpaka - satam - aṣṭ - ottaram 96 i.e. if a sāmanta (or subordinate ruler) disposed off a case involving landed property without informing his overlord, he was liable to pay a fine of 108 silver coins.

165
Likewise, if somebody was found with a vessel full of wine distilled illegally, his fine was five silver coins (Madya-bhājan sva-āvalokya rūpakāh pancha). If however, it was the first offence, fine was reduced to 2 1/2 silver coins. If he was caught a second time, the fine was doubled.\(^7\)

On the other hand, an acara tells that the blacksmiths, carpenter, barbers, potters and others could be recruited for forced labor under the supervision of varikas or officers.

(Lohakāra - rathakāra - nāpita - kumbhakāra - prabhṛtinām vārikena viṣṭhiḥ karaṇiya)\(^8\)

The Madhuban C.P. of Harsa (632 A.D.) talks of a grant of a village Somakundikā to learned Brāhmaṇa. The village had been formerly enjoyed by one Vāmarthaya on the basis of a forged sāsana. It shows that rules of smṛti to settle the punishment of forgers of royal edicts were not superfluous and that ancient forgeries existed.

**Laws of Arrest**

Law of arrests, which is plain in itself, has been enunciated by Nārada. A plaintiff should arrest a defendant who absconds when the cause is about to be tried and one who disregards the plaintiff’s words until the legal summons has been issued. Confinement to a place, arrest for a limited time, restrictions regarding traveling and prohibition from a specific act, this is the four-fold division of arrests.\(^9\)

Kauṭiyā's Arthaśāstra too dwells on them quite at length - In Chapter VIII, it deals possession and for a crime such as murder. Also, an investigating officer was liable to be punished if he held under restraint any one who was clearly not guilty.\(^10\) No one should falsely accuse another of being a thief, doing so, was a punishable offence. Protesting a thief (by hiding him) was also a punishable offence. If the ground was adequate, a person could be arrested on suspicion of having committed murder, theft or having a secret income from misappropriation or fraud or spying the enemy. Anybody with a suspicious behaviour, or disposition could be arrested. Because, interrogation after some days was inadmissible, no one was to be arrested on suspicion of having committed theft or burglary if three nights elapsed since the crime, unless caught with the tools of crime.
However, here we have an interesting variation in the inscription of Visṇusena which denies arrest or ground of suspicion. Acara 4 in the charter speaks -

'sankāya grahaṇaṁ n =asti' - i.e. the royal officials should not go in for the apprehension of the persons for taking up a case against one or for seizing one's things through mere suspicion (sanka) of a crime.

Punishments

The Indian philosophical tradition based on the concept of ‘papa’ and ‘punya’ presupposes on expiation of sins for any wrongs committed. Every action has a visible or invisible result or spiritual implications. Crime must be expiated and in Hindu belief, expiation occurs in the form of punishment. K.V. Rangaswami Aiyangar rightly analyses punishment in the Hindu context and tells, “A crime has the feature of sin and sin is a crime against God. This is the ground for the collocation of both expiation and a secular penalty for crimes punishable by the state. The Indian theory of punishment has the aim of deterrence, correction and retaliation “Quite truly the Indian system of punishment is aimed not just at penalty or correction but its major objective was to deter the people from committing crimes that invited punishments. Several times, the smrti writers do not appear practicable in some of the rigorous punishments prescribed. This is because the aim was to announce such punishments that deter the occurrence of the crimes.

The Indian belief also distinguishes between expiration of sins and punishment for crime. Expiation was supposedly a moral act in order to evince the wrong done in the form of sin, which was against the God. Punishment was the visible penalty imposed at the behest of the king and enforceable by the state.

In the ancient tradition, the highly centralized Kautilyan state prescribed a classic example of a state regulated by an elaborate system of penalties.

Among the smrtis, Manu has dwelled on what is punishment in detail in Chapter VII. He tells for the sake of the king, Lord formerly created his own son, Punishment, the protector of all creatures as an incarnation of law. He advises the king to consider all time, place, strength and knowledge (of
the offender) before inflicting just punishment on men who act unjustly. He tells that it is punishment which is the king, the manager of affairs and the surety for the four orders obedience to the law.\textsuperscript{102} It is punishment that governs all created beings protects them, watches over them while they sleep and hence the wise declare punishment to be identical with the law.\textsuperscript{103} If inflicted after due consideration, it makes all happy but if inflicted without consideration, it destroys everything. It is the fear of punishment that yields the world enjoyment.\textsuperscript{104}

The Indian theory of punishment also puts up the ideal that the sinner if punished justly by the king is absolved of the sin. Nārada observes that offenders punished by king attain heaven and they are absolved of sin if they were virtuous men.\textsuperscript{105} Nārada further advocates that if the accused such as thief is not punished by the king, the crime falls on the king.\textsuperscript{106}

As far as rigorousness is concerned, it is generally accepted that the tone of punishment in the Dharmaśāstras and early smṛitis was more severe than the latter ones. Dr. Kane rightly remarked that "from Yājñavalkya, Nārada and Brhaspati, the rigor of punishment was lessened and softened and fines came to be the ordinary punishment for many crimes"\textsuperscript{107}.

Kātyāyana has detailed the rules of punishment (he has devoted eighteen verses to it). Some of them are worth bringing to notice over here. In verse 481, he says - "Punishment is not at all prescribed (by sacred texts) for the preceptor, the father, the mother and also the relatives, when these are guilty of offences,\textsuperscript{108} There was to be no punishment for an offence was committed when one's life was in danger. Toeing the line of early smṛitis, Kātyāyana enunciates that a Brāhmaṇa could not be awarded death punishment even though he may be guilty of such offence; the king could banish him from the kingdom with all his wealth and without any bodily injury to him.\textsuperscript{109} All the varnas were to follow the rules of prayascitta (expiation for offences committed) or the king should prescribe proper punishment like fine or corporal injury.\textsuperscript{110}

Further, if a Śūdra was liable to be punished for a crime, the punishment would be double and double for the Kṣatriyas and Brāhmaṇas.\textsuperscript{111} The idea seems to be that a Kṣatriya should receive double the punishment which a Śūdra would be awarded for the same offence and a Brāhmaṇa four times as
much. In other words, the social responsibility of maintaining law and order was greater on the upper two varnas than the lower orders. Rigourness of caste is also seen in the enunciation that if a sudra was caught forsaking the order of sanyāsins or practicing jāpa (extent muttering of prayers) or home, he was to submit to death or corporal punishment or was liable to be punished with double fine. 112

In the next three verses Katyāyana talks about punishment rules for women, all of which highlight the concern for women. First, women should pay half of the fine in money prescribed for a male; when the punishment is death in case of males that for women should be mutilation of a limb. 113

Second, if women are not independent, they should not be arrested, it is the male (on whom they are dependent) who should be held the offender, the women should be punished by their lord, but the king should take away (for punishment) the male. 114 Third, even if a woman whose lord has gone on a journey be consigned to jail, she should be kept in confinement only till her lord returns. 115

This assertion that women should not be arrested and that men, whom they are dependent should be does not find any parallel in the inscriptions. However, the charter of Viṣṇusena mentions the opposite that for a crime committed by the husband, the wife should not be arrested. (Puruṣa aprādhe stī na grāhyā). 116

Hiuen Tsang has mentioned about crime and punishment in his travelogue (629-645 A.D.). He says – “As the government is honestly administered and the people live together on good terms the criminal class is small. The statute law is sometimes violated and plots made against the sovereign, when the crime is brought to light the offender is imprisoned for life, he does not suffer any corporal punishment, but alive and dead, he is not treated as the member of the community (lit, as a man). For offences against social morality and disloyal and unfilial conduct, the punishment is to cut off the nose, or an ear, or a hand or a foot; or to banish the offender to another country or into the wilderness. Other offences can be atoned for by a money payment.” 117
From his account, it appears that mutilation, banishing, imprisonment or capital punishment was the prevalent modes of punishing the offender. Fahsien, 118 also informs that in Mid-India, the criminals were fined according to the gravity of the offence committed which might suggest that caste or Varna alone was not the lone basis of punishment. But Legge's translation of passages from Fahsien suggests that criminals were fined according to circumstances of each caste, which may refer to caste variations. 119

Torture existed as a method of punishment to extract the truth. In the Daśakumārācarita, in one instance a jailor tells Appāravarman – “If you refuse to return Dhanamitā's magic purse or if you fail to restore your picking and stealing to the citizen, you will face eighteen tortures one after another" 120. Likewise, the Junagadh rock inscription of Skandagupta (A.D. 456) mentions that in his reign a person discerning punishment was not subjected to such torture. 121 Probably, the suggestion was that in Skandagupta's reign, though torture existed as a mode of punishment, it was not taken to extremes.

In Daśakumārācarita, Kampala, the king's minister having his eyes on the kingdom poisoned his sovereign Candrasimha and heir apparent Chandaghosh and so his eyes were taken away.

Banishment was quite a prevalent mode of punishment. This was the highest punishment which a Brahmana offender could be subjected (for he was excused of death punishment, being the highest in the social order) Hiuen Tsang, had mentioned as to how once a person dared to make an attempt on the life of Harṣa and everybody demanded that he be put to death. The king, however enquired into the matter, punished the main culprit and pardoned the rest. He banished 500 Brāhmaṇas to the frontier and then had returned to his capital. 122 Probably, under the influence of Buddhism Harṣa did not take up capital punishment and substituted it with banishment.

In a number of cases, property of the criminal was confiscated but that was after the due permission from the town council and the king. A person could be exempted from death and instead his property could be confiscated and he could be exiled. There is a mention of such a plea in the Daśakumārācarita where the king condemned a merchant to
death, accused of theft and Dhanamitra on his fellow’s behalf pleads – “Oh! Sir, royal tradition graciously grants exemption from the death penalty to merchant’s guilty of such felonies. If you feel furious confiscate the criminal’s property and exile him”.

Death punishment was the severest form of punishment. It is mentioned in Asokan inscription as that the king granted the accused ‘three days respite’ in one such case. Being trampled by elephant was considered the most agonizing. Dasakumaracarita mentions one Arthapala as condemned to death for theft. Royal amnesty could be granted to the accused. Kālidāsa, has this practice to have prevailed in Gupta times. Bana has also mentioned that on Harsa’s birth, all prisoners were set free by Prabhākarvardana. Most of these punishments seem to have prevailed in South India, too.

The penal system then that emerges from the smṛti provisions seems to be a harsh one. Monier Williams remarked the three most conspicuous features of Manu’s penal laws as marking those which represent the earliest forms of criminal legislation.-severity, inconsistency and a belief in the supposed justice of the lex talionis, the latter leading to punishments which in later times would be considered unjustifiably disproportionate to the offences committed and sometimes barbaric.

More or less, nearly all the smṛti writers exhibit a tough stand with respect to punishments although the punishments mildened by the time of Kātyāyana. Mutilation, death sentence and imprisonment indicate that punishments were in the nature of deterrents. It was aimed to create a fear psychosis that would desist people from committing such crimes. However, the single most conspicuous feature of the entire system of punishments was the legal privileges enjoyed by the Brāhmaṇa offender. He is treated not only leniently but evidently excused from the purview of harsh punishments owing just to his birth in the highest social strata. The offenders are punished but there seems to be a graduated scale of punishments according to their social class. Punishments were brutal for all the lesser socials, except the privileged Brāhmaṇas.

This also draws us to another discussion as to was the ancient society then a brutal society? Was it a society based on
revenge rather than reform? Deterrence merely cannot be a justification of brutality in punishment. Most crimes are committed in the heat of the passion and when out of senses. Should there be then no scope for reform. The Law Commission has initiated a spurious debate on the most humane way of carrying out death sentence. In The Times of India editorial section, dated May 5, 2003, arguments were offered in pro and anti stance.

A very paradoxical fact is whether a death sentence can be human? The truth is that there is no humane way to implement death sentence, which is simply an act of revenge, a tit for tat. The death sentence is simply the society’s revenge on the individual and this cannot form the basis of a civilized polity. Indeed by sanctioning violence, death penalty brutalizes society as a whole. Moreover there is no certainty whether justice has been done or undone.

On the other hand, it is also not fair to permit the murderers or serial killers back into the society. Principles of justice demand that a person should be punished according to the gravity of the offence and most important should be held accountable for his irrational actions. If there would be no capital punishment, life imprisonment would be the other option. But this is neither economically viable nor a hope for a person who knows that he is going to spend the rest of his life in the prison. As TOI puts it, ‘His life is already over. Its just his desire that has been indefinitely delayed. In such a case, he would rather prefer to die once than everyday. In this light perhaps, its time to initiate a debate as to how to put such prisoners to death humanely than by hanging. Lethal injection, as the talk goes on could be one option that could minimize suffering.

REFERENCES

3. Viṣṇu, Ch. XXXII, v.1, 2; p.131-132.
4. Thomas Watters, *On Yuan Chwang’s Travels in India*, p. 171-172
7. Ibid.
1 vimsopaka = 1/20 of the standard silver coin.
5 vimsopakas = 1/2 of the silver coin.
39. cf Yajnavalkyasmṛti, II, 159.
42. Ibid, v.316, p.309.
44. Ibid, p.479.
45. It is, however, found as an additional section in a Nepali manuscript discovered by Jolly. cf. Sacred Books of the East XXXIII, pp, 223-32.
47. cf. Ibid, v.4, p.178.
    cf. *Sākuntala*, V.

53. Ibid, p.146.

58. Ibid, Notes.
60. cf. Visnusmṛti, Ch. XXXV, v.1, pp 132-133.
61. Ibid, Ch. XXXVI, v.1,2.
64. Ibid, v.798, p.284.
66. *Kātyāyana on Vyavahara*, v.806, p.286. There is a similar verse in
    *Yājñavalkya*, II.277.
69. Viṣṇu, Ch. V, v.190, p.41.
72. Ibid, Ch. VIII, v.353.
74. Ibid, Ch. VIII, v.356, 358, p.316.
76. Ibid, v.359, p.316.
81. Ibid, v.223.
84. Ibid, p.139-140.
86. cf. Act III.
90. Ibid, p.171.
91. Ibid, p.172.
95. Ibid, p.175.

100. L.N. Rangarajan, Kautilya, The Arthaśāstra, (4.8.8) in VI. Iv.


107. P.V. Kane, History of Dharmasāstra, 3.390.

108. P.V. Kane, Kātyāyana on Vyāhara, v.481, p.210-211.


110. Ibid, v.484, p.211.

111. Ibid, v.485, p.211.


118. S Beal, Travels of Fahsien, pp. 54-55.

119. Legge, A Record of Buddhist Kingdom, p.43.

120. cf Daśakumārakarita, p.78.


122. Watters, op cit., I, p.172.

123. Daśakumārakarita, p.137.