CHAPTER XII

Trial and Punishment

According to some scholars, no reference is found in the Vedie literature to the king as judge either of civil or criminal cases. Possibly disputes were decided by the kula or the guild. Though offences like theft are mentioned in the Vedic literature, 'there is no trace of an organized criminal justice vested either in the King or in the people'. The prevalence of the system of wergild probably indicates that criminal justice remained in the hands of the wronged party. References to the sabha, the sabha-caras, and the arbitrators, probably indicate that litigants who were too weak to help themselves submitted their disputes to the assembly or to an arbitrator.

A wide criminal jurisdiction is, however, to some extent supported by the frequent mention of Varuna's spies, for Varuna is the divine counterpart of the human king. Possibly, they were engaged in detecting crimes as in the ages of Manu, Kautilya, Parada and others. The Chandogya Upanisad refers to the ordeal of the red-hot axe as applied in an accusation of theft. 'It must apparently be understood to have been inflicted by the direction of the king'.

In the earliest Dharmasutras, administration of justice was regarded as one of the important functions of the king. That the king personally administered criminal justice is clearly proved by some verses of Apastamba, Gautama, Vasiṣṭha, Baudhāyana, and others. The king had to punish the thieves with a club, otherwise he incurred sin.
Visnu, Manu, Yajnavalkya, Narada and others also refer to the punishing of thieves by the king himself with a club. Later on, the Gāḍālas were entrusted with the carrying out of the sentence. Such direct dispensation of justice by the king was possible only when the kingdom was small and the crimes were few in number. Soon the king established regular courts presided over by permanent judges. The chief judge (prādīvīkā) of the king's court declared the law and the king awarded the punishment. The king also heard appeals from the lower courts and tribunals. As the sphere of the king's justice was enlarged, the popular tribunals were not allowed to try cases concerning sāhase.

Brhaspati and Kautilya mention various types of courts. The Kantakasodhara court of Kautilya, according to Rangaswami Aiyanger, was a Police and Administrative Court. Its object was to protect the people from harmful persons (Kantaka). It punished artisans, goldsmiths, merchants who would deceive the people by violating the existing laws and took steps to arrest young men inclined to theft, robbery, etc., to apprehend criminals on suspicion or while committing crimes, to examine cases of sudden death and to protect the state departments from theft. It meted out various punishments to the offenders. It also performed other works which we cannot now include within the jurisdiction of criminal courts. Its functions are like those of a modern police organisation. In wrongs dealt with in the Kantakasodhara section, it was the king or king's officers who themselves brought up the offenders for punishment and the offences were viewed not as mere
private matters, but as matters in which the state was concerned for
the eradication of crime in general'.

We have many references to judges and officers having judi-
cial powers. It is interesting to note that the village headman had
also some judicial powers. He was the chief of the village
assembly which had some judicial function. He could drive a thief
out of his village. He could also try other cases. But he could
not probably try cases of organized brigandage or serious cases of
theft and had to send them to the royal court. Thus the Kulavaka
Jataka (No. 31) shows that a village headman, though very eager to
crush a band of virtuous men, had to send them to the royal court
for trial on the false accusation of robbery. Kautilya says that
if a headman expels a man from a village on a charge other than
theft or adultery, he should be punished with a fine of twenty-four
papas and the villagers should pay the first amercement. It shows
that the village assembly presided over by the headman decided cases
of theft, etc. and the king also exercised his right of supervision
over their activities. Once a forest guard arrested a traveller
on the false charge of stealing his jewel and brought him before
the village headman. The headman rebuked the traveller and had him
beaten to death. His dead body was then cast away.

Village assemblies in South India punished thieves and
cattle-lifters* with fines. According to an inscription (1173
A.D.) of the Gahadavala, King Jayacandra, some Brahmanas of a
village being harassed by some looters and cattle-lifters decided
to kill them, when caught, instantaneously or to pluck out their
eyes (Caksurvadhah), and also to banish their abettors and demolish
their houses. These Brāhmaṇas must have been empowered by the king to exercise such wide powers. The village-assemblies also punished defalcation of public money.

The Pañca-ṇula or pañce kula was a town court which tried persons suspected of theft. Its judges were known as pañcasulikas or Karanikas. Possibly the rajaramukhyas, paṇaramukhyas, paṇa-vyuddhas performed some judicial functions. A police officer in the Dasakumaracarita intent or confiscating the property of a merchant on a charge of kidnapping a girl asks the Town-elders not to object to the confiscation. A kirg asked his men to search the house of a merchant suspected to be a thief in the presence of the city-elders. These city-elders probably formed the Town-council that assisted the city-prefect in governing the city.

According to Manu, the king or his officers should not generally start a legal proceeding at their own initiative and must not hush up a case brought before them. Of course the king could take action in some cases suo motu. Pitaṁba mentions them as aparāda, pada and chala. The ten aparādaś included theft; the padas included concealment of treasure-trove, appropriation of taxes, etc.; receiving property from a man who was not the owner of it and the chalas included unauthorised entrance into the king's treasury, etc.

When the litigant came before a court and bowed, the judges used to address him thus: 'What is your business? What is the injury done to you? Don't be afraid, speak out, man! By whom, when, where and why (was the injury caused)?' After considering his replies along with the sabhyas and the Brāhmaṇas, the judge would,
if the case was legally entertainable deliver the sealed order to the defendant or order the bailiff to summon the defendant. In some cases, the king did not require the personal appearance of the defendant but in cases of theft and other grave crimes, personal appearance was compulsory. When the plaintiff came to the court, his statement regarding the matter in dispute was recorded briefly. When the defendant came, the plaint was written down with all details.

The plaintiff was permitted to keep the defendant under restraint by a process of law called asedha till the approach of the bailiff. Both parties had to offer sureties. The surety (pratibhu) undertook to produce the litigant before the court and assured it that the litigant would not abscond from the country. In the Dasakumārācarita, a merchant accused of kidnapping a girl remained on bail from the merchants' guild till he could furnish dependable proof against the charge. According to Kane, in criminal cases, no court fees had to be paid. In disputes relating to sāhasa, theft, etc., the defendant had to file his reply at once, though, in other cases, time might be granted at the discretion of the judge.

A defendant could not raise a counter claim as long as he had not met the attack of the plaintiff. Another plaintiff could not also attack a person who was already defending a case except in the case of abuse, assault, sāhasa, etc. The burden of proof would lie on the plaintiff in a reply of denial and on the defendant in other cases of reply. According to Kautilya,
when a person accused of theft proves in his defence the complai-

rant’s enmity or hatred towards himself, he shall be acquitted. 

Proof was of two kinds, human and divine. Documents, witnesses and

possession formed human proof and ordeal was the divine proof. 

Gautama, Kautilya and Narada state that when there is doubt 
or discrepancy in the statements of litigants, truth should be
determined with the help of the witnesses. The number of witnesses
was not fixed and even a single witness was sufficient in a case 
of sahasa. According to a Buddhist tale, a king decided a
case relying on the evidence of a single pious man, the Buddha.

Generally the witness was required to be of a good family, mature, 
well-to-do, virtuous and a permanent resident of the country. A 
thief or robber could not be a witness; but it is pointed out that 
in cases of robbery and other heinous crimes, witnesses should not 
be examined too strictly.

Manu, Katyayana and Usanas declare that in crimes 

involving murder or in matters that occurred inside a house or in 
a forest, even a woman or a minor or a very old person or a hired 
servant or a slave or a relative or a pupil may be a competent 
witness, if no other witness is available. But Narada refuses 
to recognise a minor, a woman, a single person, a cheat, a relative 
and an enemy as witnesses even in sahasa.

According to Kautilya, in cases of theft, abduction, 
etc., persons other than one's wife's brothers, foes and co-partners 
could be witnesses. In a tale of the Kathasaritshaga, the 
evidence furnished by a thief is deemed to be sufficient for releas-
ing an accused. The witnesses were cross-examined and fines and
other punishments were prescribed for giving false evidence. In the *Dasakumāracarita*, a king threatens a female witness with torture as she is not willing to disclose the nature of a thief. Kautilya says that in case of an offence like theft, at first the witnesses of the defendant shall be asked as to the defendant's country, caste, family, name, occupation, property, friends and residence in presence of the complainant. Next their answers should be compared with the statements of the defendant regarding the same. Finally the defendant should be asked as to 'not only the nature of the work he did during the day previous to the theft, but also the place where he spent the night till he was caught hold of. If his answers for these questions are attested to by reliable referees or witnesses, he shall be acquitted. Otherwise, he shall be subjected to torture'. In the *Nṛchakatika*, the judge questions Carudatta accused of murdering and robbing a courtesan named Vasanta-serā, as to his relation with the victim and the latter's movements about the time of the alleged offence. Witnesses were to be examined by marking their tone, change of colour, eyes, gesture and demeanour.

Generally speaking, the party whose averments were wholly supported by the witnesses won the case. In charges of heinous crimes and theft, 'the whole matter that is alleged may be held proved, when witnesses depose to only a part of the matter'.

Another important proof was *Nukti* or signs that led to an inference. It meant circumstantial evidence which was resorted to for finding out the criminal in default of documents and witnesses, especially in cases of heinous crimes. According to Vasistha,
who is found armed or wounded or in possession of the booty (stolen) may be declared to be (the thief or offender). Narada says that when a suspect is arrested without stolen goods in his possession, he should be cross-examined and his answers and behaviour should be closely observed. According to him, 'Questions shall be proposed to them antithetically with regard to place, time, region, their caste, their name, their dwelling, and their occupation, in case they happen to be workmen. When the face changes colour or the voice falters, or the features look suspicious when they do not give evidence in public, when they make impossible statements as to the place and time, when there exists a doubt as to their place of residence, when they indulge in expense for bad purposes, when they have been previously convicted of larceny, when they keep bad company, or when documents speak against them, (by all such circumstances) they may be discovered (to be thieves).

The king or judge, according to Manu should see through the thoughts of men by external signs, limbs, look, motion of the body, gesticulation, speech, voice, changes of the eye and the face, colour, action etc. The Pâñcatârtra, also describes the various marks that would indicate a criminal or an innocent man.

Too much dependence on circumstantial evidence was, however, discouraged. According to Brhaspati, 'a thief is held to be not a thief and a good man is held to be a wicked one in a judicial proceeding (not arrived at with proper reasoning).'

According to the Mitâkṣara, Narada lays down that the king should carefully examine whether a man caught is really a thief. 'When property alleged to be stolen is found with a man, it may be that
the articles came to his hand from another's hand or he may have taken it up when it lay unclaimed on the ground or he may have taken it as a thief'. The Mitakeśa, further says that even an innocent man may betray some signs of a real thief or some stolen property may be found near such a man. Planting of loot upon innocent men by thieves and robbers has already been referred to. According to Brhaspati, the sage Māndavya was punished because the decision against him was arrived at without proper reasoning. Kautilya also asks the king to punish one only after thorough examination. The same authority says that guilt against suspected persons should be proved by the production of instruments used by the accused, his accomplices or abettors, the stolen article and any middleman involved in selling or purchasing the stolen thing. The validity of these evidences shall also be tested with reference to the scene of the theft and the circumstances connected with the possession and distribution of that article. In the absence of such evidences and when the accused weeps much, he may be regarded as innocent. Kane points out that Act IX of the Kṛchakatika 'is a standing literary condemnation of conclusions about guilt drawn from circumstantial evidence'. In spite of severe warnings, Kings almost invariably punished men on the strength of circumstantial evidences against them. We have, however, a few cases where, against strong circumstantial evidence, the king or the judges examined the accused and even released them. According to Samarājīcakha, a king even after discovering some stolen goods in the possession of an honest man, asked him to disclose the real truth as he could not regard truth as that of a thief. In another case, a person Dhara by name was
was questioned by the king's minister regarding his possession of the missing necklace of the princess. Dhana replied that he had purchased it at Katahadvipa and it was all that he had saved in a shipwreck. He further said that this had happened a year before. But as the princess had left the capital only two months ago, the minister discredited Dhana's statement and referred his case to the king. The king showed the necklace to the treasurer who readily recognised it. Still the king questioned Dhana but getting no satisfactory reply sentenced him to death.

Once a certain farmer found some ornaments underground which were stolen from the palace by some thieves and put them upon his wife's body in the wrong way. Thus he put the girdle on her head, the necklace round her waist, the anklets on her wrist and the bracelets on her ears. When the king was informed of this, he took away the ornaments but pardoned him as he was a stupid. When a man is arrested on suspicion of being a thief, he could not be acquitted on his mere denial of the offence. He had to prove innocence by ordinary evidence (such as proof that he was elsewhere when the theft was committed) or ordeal. According to Narada, even when circumstantial evidence and inferences therefrom do not enable the judge to decide the case, he should ask the litigant to take oath or face ordeals.

Before describing the oaths and ordeals, something should be said about tortures generally used by the policemen and judges to elicit confession from the accused. According to Kautiliya, those persons whose guilt is believed to be true should be subjected to torture (karma). He says that four kinds of torture are in vogue: (1) six punishments (or six strokes with a rod), (2) seven kinds of whipping, (3) two kinds of suspension from above and (4) water tube
Persons committing grave offences should be subjected to these fourteen kinds of torture: (1) Twelve strokes with a cane of nine cubit long, (2 & 3) two thighs that is two types of thigh-bindings, (4) twenty strokes with a stick of the tree raktamala, (5) thirty-two strokes on each palm of the hands and each sole of the feet, (6 & 7) two types of scorpion-bindings where the left and right hands are taken backward and bound with the left and right legs respectively, (8 & 9) two kinds of suspensions, (10) driving needles through hands of fingers, (11) preventing the criminal from urinating after feeding him with rice-gruel, (12) burning one joint of the finger, (13) heating the body of the criminal for a day after causing him to drink oil or ghee, (14) exposure to the cold for a night in winter on a bed of wet coarse green grass.

In the absence of strong evidence and also when the accused fell a weeping, he was to be regarded as innocent and not to be tortured. Persons guilty of minor offences, youngsters, the aged, the afflicted, persons under intoxication, madmen, hungry or thirsty persons who have just taken a good meal, persons who have confessed of their own accord and also weak people should not be subjected to torture. Pregnant women and women who have not passed a month after delivery should also be exempted. Torture of women should be, according to Kautilya, half of the prescribed standard. Women may also be subjected, to the trial of cross-examination. A Brahmana or an ascetic should never be subjected to torture.

A fresh kind of torture might be employed each day. Criminals who robbed in accordance with the threat previously made by
them, who partly used the stolen articles, who were arrested red-handed or with the stolen articles, who tried to burglarize the king's treasury, or who had committed culpable crime might be subjected to torture in accordance with the king's order once or many times to one or all of the above kinds of torture.

Judges were allowed to engage as spies, such people as harlots, suppliers of water and other drinks to travellers, storytellers, hotel-keepers who provide travellers with boarding and lodging, any person who was acquainted with the work of the suspected person and was in a position to watch his movements and examine his honesty or character by various tests. Persons found guilty were subjected to torture.

In Act IX of the Mrochakatikā, the judge, on finding strong circumstantial evidences against the accused Carudatta, threatens him with torture unless he speaks the truth.

Huen-Tsang says, 'In the investigation of criminal cases there is no use of rod or staff to obtain proofs (of guilt).'

Oath (sāpatha) and ordeal (dīvya) constituted the divine proof (dāvikriya or samayakriya). The first of them was generally employed in cases of small value while the latter was resorted to in serious disputes and crimes.

According to the Viśnu Dharma Sūtra, in cases of denial of a deposit or of alleged theft or robbery oaths are to be administered according to the value of the property claimed, the value being estimated in gold. He prescribes that when the litigant is a śūdra and the dispute is relating to a matter worth less than one, two, three, four or five krর্ণাল, he should swear by holding
in his hand respectively: furva grass, sesame, silver, gold or earth taken from ploughed land, beyond five kramalas, various ordeals could be offered. Oaths with similar objects in the hands should be undertaken by Vaiśyas, Kṣatriyas and Brāhmaṇas, if the value of the subject matter is double, three times or four times of the value in the case of a śūdra. Taking of false oaths was punished with fines.

Whether ordeal was known in the Vedic age is doubtful. The Chandogya Upanisad, however, as said earlier, refers to the holding of the heated head of an axe in the hand by a person accused of theft to prove his innocence. To explain the power of truth in saving a man even from death, this Upanisad says that when a person accused of theft is brought handcuffed to the place of trial, he is asked to catch hold of a heated axe. If he is innocent, it does not burn his fingers, and he is acquitted.

In cases of sahasa and steya (criminal assault and theft) ordeal was generally used. Pārada says, that persons suspected by the king, or denounced as criminals owing to their association with robbers should be tried by ordeals.

According to Brhaspati, in all cases, if a person arrested on suspicion refused to confess his guilt, he should clear himself from the suspicion by an ordeal. Ordinarily, ordeal was administered to the defendant.
The original severe forms of ordeal gradually yielded place to milder forms of test. According to Vaiśeṣika, the ordeals of balance, fire, poison and water are to be resorted to in disputes of great value and in cases of treason, theft, and grave sins, without any offer to pay fine on defeat. The ordeals recommended by Brhaspati for a low person in cases of theft may be described in a tabular form:

<table>
<thead>
<tr>
<th>Value of articles stolen:</th>
<th>Ordeals recommended:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1000 Paras</td>
<td>Poison</td>
</tr>
<tr>
<td>750 &quot;</td>
<td>Fire</td>
</tr>
<tr>
<td>400 &quot;</td>
<td>Hot gold</td>
</tr>
<tr>
<td>3000 &quot;</td>
<td>Rice</td>
</tr>
<tr>
<td>150 &quot;</td>
<td>Sacred libation</td>
</tr>
<tr>
<td>100 &quot;</td>
<td>Dharma</td>
</tr>
</tbody>
</table>

For persons of a middling kind, the amount should be double, and for persons of the highest rank, it would be four times as high. Viṣṇu prescribes ordeals for persons belonging to the four castes in the cases of denial of deposits or of alleged theft according to the value of the property claimed.

<table>
<thead>
<tr>
<th>Value of property claimed or stolen:</th>
<th>Ordeal for a Sudra</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than half a Suvarna</td>
<td>Sacred Libation</td>
</tr>
<tr>
<td>More than this amount</td>
<td>Balance or Fire or Water or Poison</td>
</tr>
</tbody>
</table>

If the amount is twice or thrice or four times as high as in each of the two cases mentioned above, a Vaiṣṇa, a Kṣatriya and a Brāhmaṇa should undergo respectively the same ordeals.
prescribed for a śūdra. A brahmana, however, must not be subjected to the ordeal by sacred libation.

Vishnu further states that any person formerly convicted of a crime or of perjury must be forced to undergo one of the ordeals mentioned above even though the matter in dispute be a trifling. But to the honest and virtuous, the judge must not administer any ordeal though the matter in dispute may be very important.

According to Kātyāyana, persons guilty of the grave sins, great rogues, experts in incantations and yoga practices, and those who repeatedly commit sin should not be allowed to undergo ordeals personally. Good persons appointed by them or their relatives should undergo them on their behalf. Rauhineya, a master of charms and spells was not allowed to undergo ordeals. He could not be burnt by fire, bitten by snakes or killed by poison. The Rāja-tarangini refers to a man famous for his knowledge of charms who could easily get over an ordeal.

According to the Vyavaharātattva, the Mlecchas and others performed ordeals with the snake in the jar and the like. Rauhineya wanted to clear himself from the charge of theft by dragging out a snake of a jar. This snake-in-the-jar ordeal has also been mentioned in inscriptions. The ordeals and the procedure common to all ordeals have been described by Kane.

According to Huien-Tsang, when the accused obstinately denies his fault, or tries to excuse himself, then four kinds of ordeal: (1) by water, (2) by fire, (3) by weighing, (4) by poison are used.

Thus in several respects Huien-Tsang’s ordeals differ from the ordeals described in the sūtris and digests and his poison
ordeal is altogether new. Albaruni describes the ordeals of poison, kosa, balance, tapatamasa and the ordeal of the red-hot iron correctly. His water ordeal is somewhat different. Various inscriptions also refer to many ordeals.

The thief Rauhineya wanted to clear himself from the charge of theft by undergoing any of the four ordeals, snake-in-the-jar, fire, sacred water and poison. An alleged thief in the Mruchakatika feels aggrieved because he was sentenced to death without being tested by any of the four ordeals viz. poison, water, balance and fire. In the Rauhineyacéritra, Abhaya, the king's minister administered the Kosa ordeal to Rauhineya with some modifications.

The last stage in the judicial proceeding was called siddhi or niraya i.e. decision. The judge in the Mruchakatika says, 'we are authorized (merely) to give our decision (in a case); but the rest (i.e. the actual punishment) depends on the king.' The Abhijñarasakirtana refers to the royal mandate recorded in a document in a case of alleged theft but in the Mruchakatika; the bailiff communicated the king's decision verbally to the judge in a case of theft with murder. A somewhat different account of the administration of justice in criminal cases in Vesali, the chief town of the Licchavis is given in the commentary of the Mahāpariribbāna sutta.

The third member of the Executive Council of a Republic was in charge of justice. He was to decide civil and criminal cases, probably as an appellate court. Farada prescribes that the king should decide at once cases concerning a cow, larded
property, gold, a woman, robbery, a heinous offence, etc. Judges were punished for violating the rules of judicial procedure and also for corruption.

Now a few specific cases of trial of thieves or of persons accused of theft by the king or judges may be discussed. One Dhanamitra reported to the king of the stealing of his magic wallet and also said that one Vimardaka, an employee of the merchant Arthapati threatened him before the city-elders to steal his wallet. According to Dhanamitra, Vimardaka falsely accused him of trying to take away the wife of his master by means of wealth got from that magic wallet.

The king, having summoned Arthapati asked him in private whether he knew Vimardaka. Arthapati said that he was his close friend. The king then asked him whether he could produce him (Vimardaka) before him and he replied in the affirmative. But failing to trace him he became conscious of his own responsibility for the felony and in fear contradicted himself. He was then imprisoned by the order of the king. Then Dhanamitra again told the king that the suspicious behaviour of a greedy courtesan, called Kamamanjari who was giving away all her wealth, had led him to believe that his stolen magic wallet was in her possession because that wallet yielded money only to merchants and courtesans who gave away all their wealth. The king sent for Kamamanjari and her mother and they had to confess that the bag was with them. Then the king asked them to name the person who gave it to them. As they tried to hide his name, the king said that it was not proper because people visiting courtesans, do not always depend on wealth earned by honest means.
When the king pressed them threatening to cut off their nose and ears, they named Arthapati. The king then decided to sentence Arthapati to death.

A man complained to the king that some fools of his village had stolen his buffalo and taking it under a banyan tree near the tank, they had killed it and eaten its flesh. One of the thieves said that there was no tank or banyan tree in their village. The owner affirmed that the tree and the tank were there on the eastern side of the village and they killed his buffalo on the eighth day of the lunar month. That thief then said that there was no east side or eighth day in their village. The king realised that he was a perfect fool and in order to encourage him smilingly said, 'You are a truthful person, you never said anything false, so tell me the truth: did you eat up his buffalo or did you not?'

Being puffed up, the fool confessed that they had eaten the buffalo but all the other charges were false.

Two friends called Dharmabuddhi (Right-mind) and Papabuddhi (Wrong-mind) earned some money together and buried most of it in a forest for future use. But the wrong-mind stole the hidden treasure and levelled the ground. After some time when they excavated that place no money was found and the two accused each other of theft and went to the court. When the magistrates ordered an ordeal for each, Papabuddhi said that he had a witness who would reveal to them the real thief. The goddess of the forest where the treasure was buried would give evidence in his favour. The judges became greatly interested in the case and asked the litigants to accompany them to that part of the forest next day morning.
Papabuddhi hid his father in a hole of a tree near the appointed place during the night and in the morning bathed, wore clean garments and followed the magistrates and Dharmabuddhi to that tree in the morning. Then he cried out, 'O blessed goddess of the wood, which of us two is the thief? Speak.' His father, spoke unobserved that Dharmabuddhi stole the money. Greatly astonished, the magistrates began to think of the proper penalty for stealing money. But Dharmabuddhi sensing some foul play heaped some inflammable matter about that hole in the tree and set it ablaze. The father of Papabuddhi came out of the hole wailing and badly burnt and disclosed the knavery of his son. Then the magistrates hanged Papabuddhi to a branch of the tree and commended Dharmabuddhi and satisfied him by conferring upon him the king's favours and also other things.

The Kathāsāratāsāgara gives a slightly different version of this story. Here the litigants are brothers and the judges, their suspicion being roused by the surprising utterance of the tree accusing Dharmabuddhi of theft, introduce smoke into the hole in the tree. This fumigates the father of the brothers and he falls from it dead. The magistrates then understand the plan of Papabuddhi and compel him to give back the stolen money to Dharmabuddhi. They then cut off the hands of Papabuddhi and also cut out his tongue and banish him.

In the Samarāccakāha, a kotwal arrested a thief on the charges of burglary and murder. The king summoned the readers of the dharmaśastras and asked them about the appropriate penalty in this case. The tale of Candana and Cakradeva in the Samarāccakāha has been described earlier also indicates the procedure followed by judges.
When prince Abhya arrested the notorious thief Rauhireya, the king decided to punish him. Abhya, however, requested the king to punish him after an investigation as he was not caught with stolen goods in his possession. So the king began to question him thus: 'Where do you come from? What is your occupation? For what reason have you come here? Are you Rauhireya?'. The thief replied that he was Durgacanda, a householder in the village Sali. He came there on a matter of business. The king imprisoned him and sent a man to the village Sali to enquire whether the accused was the resident of that village. As Rauhireya's statement proved to be true, Abhya tried a clever device, described earlier, to elicit a confession from the thief about the crimes committed by him. As Rauhireya refused to confess, Abhya said to the king, 'By such means it is not possible to determine who is a thief. Even if he is a thief, he must be released. The law cannot be broken'.

Though justice was often administered in a summary manner, the king, if some convincing proof was suddenly available regarding the innocence of the accused, tried his case anew even bringing him back from the place of execution and if found innocent honourably acquitted him and gave him rewards.

According to Narada, when an innocent person has been accused of robbery and declared guilty, because he cannot prove his innocence, he shall be paid twice as much as has been stolen after the real thief is detected. Katyayana prescribes that if an innocent man is forced by policemen to restore or pay the price of the thing stolen, he should get it back when the real thief is found out and the king should make the policemen pay to that man double the amount paid by him.
In Act VI of the *Abhijnana Sakuntala*, the king orders an innocent fisherman caught on the suspicion of being a thief to be released.

A few cases of trial by arbitration are described in Appendix II.
References

8. Apastamba, I. 9. 25. 4-5; Gautama, XII. 43; Vasistha, XIX, 38, 40, 43-45; Baudhayana, II. 1. 1. 16.
(21) *Dasakumararacarita*, pub. Ramaswamy, Chap. VI, p. 207.

(22) Kali Pada Mitra in IHQ, *op.cit.*, pp. 76ff.

(23) *Manu,* VIII. 43.

(24) Pitamaha quoted in the *Sauri Candrika,* ed. J.R. Charpurne, II, p. 27.


(26) Ibid., p. 287.

(27) Ibid., p. 292.

(28) Ibid., pp. 290ff.

(29) *Yajnavalkya,* II. 10.

(30) *Manu,* VIII. 160.

(31) *Dasakumararacarita,* *loc.cit.*, *Sreniprathamaya... atisthat.*


(33) *Manu,* VIII. 58; *Yajnavalkya,* II. 12.


(35) Ibid., p. 304.


(38) Ibid., pp. 330-32.

(39) *Buddhist Legends,* *op.cit.*, Vol. XXIX, pp. 121ff.

(40) *Kane,* *op.cit.*, Vol. III, pp. 332ff.

(41) Ibid., pp. 337.

(42) Ibid., pp. 337-38.

(43) *Kautilya,* III. 11.


(49) Kane, op.cit., Vol. III, p. 346.
(50) Ibid., pp. 347-49.
(51) Ibid., pp. 354-55.
(52) Loc.cit.
(53) Loc. cit.
(57) Kane, op.cit., Vol. III, p. 357.
(58) Ibid., p. 521.
(59) Loc.cit.
(60) Kane, op.cit., Vol. III, p. 357.
(61) Kautilya, IV. 8; Kane, loc.cit.
(62) Kautilya, IV. 8; trans. Shamaṣṭra, p. 246.
(63) Kane, loc.cit.
(64) Sagarāccakāra, ed. Jacobi, Second Bhava.
(65) Ibid., Fourth Bhava.
(68) Ibid., pp. 357ff.
(70) Mrochakatika, trans. Ryder, p. 150.
(73) Mama, VIII. 119ff.
(74) Chandogya Upanisad, VI. 16. 1; Vedic India, ed. R.C. Majumdar, p. 434.
(77) Ibid., p. 315.
(79) SBE, op. cit., p. 364.
(80) Vajravalkya, II. 95, 96, 99.
(81) Brhaspati, trans. in SBE, op. cit., pp. 316ff.
(86) Rauhiresvaritra (261ff.), op. cit., pp. 159ff.
(87) Kane, loc. cit.
When in ancient times a criminal was brought before the rulers of the Vajjis (i.e. the Licchavis) they made him over at first to the Vinichayamahamattas. These then tried him and if they were convinced that he was innocent, set him free. If they, on the other hand, held that he was guilty, they made him over to the Voharikas, without pronouncing any sentence. The latter examined the matter and set him free in case he was innocent; if, on the contrary, he was guilty, they took him to the suttadharas (probably they should be called suttadharas "knowers of the sutta, the law") who proceeded in the same way with him. From there he was taken to attakulakas (probably attakulakas, by which, according to Lassen's supposition, a court consisting of eight heads of families is to be understood) who in their turn left the decision to the sempati; from there, the accused was made over to the uparajan and from him to the rajan. The latter then investigated the contd. . . .
case and set the accused, if he held him innocent, at last free; if he, however, found him guilty, he pronounced the judgment in accordance with the pavenipotthaka, the book of customs'. Rhys Davids holds that such a complicated procedure was not actually followed. See Rhys Davids, Buddhist India, p. 11.


(100) SBE, Vol. XXXIII, Pt.I, p. 16.


(102) Dasakumaracarita (Chap. II), pub. Ramaswamy, pp. 107 ff.


(106) Kali Pada Mitra in IHQ, Vol. V, p. 84.


(108) Buddhist Legends, op.cit., Vol. XXIX, pp. 121 ff.; Mrchakatika, Act X.


(110) N.C. Sen Gupta, op.cit., p. 305.
In one of his births, the Bodhisatta, when only seven years old, earned unstinted praise from all by finding out thieves in some complicated cases.

In the village of Yavamajjhaka, while a cowherd was sleeping in the field with his cattle grazing near him, a thief began to drive them away towards his destination. When the cowherd woke up, he accused him of stealing his cattle but the latter denied the charge and claimed the cattle as his own. Their altercation attracted a big crowd. The Bodhisatta had the plaintiff and defendant brought before him and asked them the cause of their struggle. The owner said that the cattle were his and he bought them from a certain person of a certain village while the thief said that the cattle were born in his house and belonged to him. Bodhisatta promised to decide the case fairly if they agreed to abide by his decision. As they agreed, he asked the thief about the food and drink given by him that day to the cattle. The latter replied that they had drunk rice-gruel and had been fed on sesame flour and kidney-beans. The owner, however, said that being a poor man it was not possible for him to get rice-gruel. He fed them on grass only. Then Bodhisatta held an assembly there, caused some panic seeds to be ground in a mortar and moistened with water and gave that to the cattle to eat. They at once vomited and only grass was found. Bodhisatta showed it to the assembly and charged the thief with the theft of the cattle which he could no longer deny.

Once a woman stole another woman's necklace made by tying together several threads of different colours and claimed it
as her own. Their dispute collected a great crowd around them. The Bodhisatta heard the cause of the dispute and knew the thief by the appearance of her countenance. He promised to solve their dispute if his decision was abided by the disputants which the latter agreed to do. The Bodhisatta then asked them about the scent they had used to perfume the necklace. The thief said that she always used sabbasamhāraka to scent her necklace with. The owner of the necklace told that being a poor woman she could not get sabbasamhāraka. She used the scent made of piyāngu flowers to perfume it. The Bodhisatta had a vessel of water brought there and put the necklace in it. He then sent for a perfume-seller and asked him to smell the vessel and name the perfume. As the seller smelled the perfume of piyāngu flower, the thief had to confess her guilt.

(3) A woman tried to go away with a cotton-ball when its owner, another woman, had gone down keeping it on the bank of a tank. As the owner protested, an altercation started between them. When both of them agreed to accept his decision, the Bodhisatta asked the thief what she had put inside the ball to roll it round. She replied that she had used a cotton-seed. But the owner said that a timbaru-seed had been used by her. Then the Bodhisatta untwisted the ball of cotton before the assembled multitude and found a timbaru-seed inside it. The thief was forced to confess her guilt.

(4) When a woman laying her child or the side of a tank went to bathe into it, a female goblin disguised as an ordinary woman tried to run away with it in order to eat it afterwards. As the mother caught hold of her, she said that it was her child. Hearing
the noise, the Bodhisatta sent for them and promised to solve the dispute on the condition stated above. He then drew a line, put the child in the middle of it and asked the goblin to seize the child by the hands and the mother by the feet. Then she bade them pull and said that the child should be hers who could pull it over to her side. As they began to pull, the child gave a sharp cry. Deeply shocked at this, the mother let the child go and fell a weeping. Now the Bodhisatta asked the people assembled there whether it was the mother that was more tender to her child or that any other woman. They replied that it was definitely the mother's heart. Then he asked if the woman who kept on pulling was the mother or that who let it go. Their verdict went in favour of the mother. The Bodhisatta then said that the first woman was really a female goblin who betrayed her identity by her red unwinking eyes, shadowless figure, fearlessness and cruel nature. The goblin had to confirm his findings.

(5) A man Dighapitthi by name took away Golakala's wife with her consent in the presence of her husband and beat the former when he protested. He claimed her as his own wife. The Bodhisatta interfered as before and asked Dighapitthi his name and names of his parents. These he told easily. But when he was asked to name his wife and her parents, he not knowing their names mentioned some other names. Bodhisatta put those names in writing, bade him go and asked Golakala the same questions. He gave the correct names. These were also put in black and white. Then he ordered him to go. He then asked the wife the names of herself, her parents her husband and her husband's parents. The wife told her name
correctly but regarding the others mentioned some fictitious names, Bodhisatta put her replies in writing and then asked the assembled people to compare the reports of Dighapithi and Golakala with the account of the woman and say whose report agreed with the latter's account. The mob shouted that Golakala's account tallied with that of the woman. Bodhisatta then declared Golakala to be the real husband of the woman.

(6) A man began to drive away the chariot of another when he had alighted from it to attend the call of nature. When the latter protested, the former claimed it to be his own. The Bodhisatta interfered and asked a third man to drive the chariot. He bade the disputants hold on behind it and declared that the real owner would not let it go. After running some distance, the owner let it go while the other man kept on running with the chariot. When the Bodhisatta recalled the driver, this man too returned with the chariot. The Bodhisatta said that though the second man had run so speedily for so long a distance there was not a drop of perspiration on his body, his eyes were unwinking and he was fearless. So he must be the god Sakra and not the owner of the chariot. Sakra confirmed his conclusion.

Act IX of the *Mrochakatika* vividly describes the trial of an alleged thief.