Chapter One

Concept of Crime Through Ages
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1.0 Introduction:

Law was, is and will be a living subject so long as mankind lives on the earth. It differs from nation to nation, place to place. It is subjected to practice and customs. If we take an example of smoking we may find that earlier smoking was treated as fashionable and somehow luxurious in the human society. But after a long period of time the present wisdom of the whole world prohibits smoking. Most of the Governments have passed the law against smoking. In a near future there might be strict prohibition for smoking. It is also a fact that what is a crime for one nation is not at all a crime in another nation. Such as adultery was a heinous nature of crime in ancient India but it was not such heinous in European nations. Even the concept of adultery between ancient and modern India is far different. So to draw a picture of the evolution of the concept of crime let us see what crime constitutes of. In general, 'crime as a violation or omission of law, or wrong doing of a criminal nature, or an offence against morality which is subjected to public punishment’\(^1\). But in the earliest period law was not so systematic. It was nothing else than religious codes or customs. In some cases codes were not made by human beings. It is supposed to be God gifted i.e., *apauruṣeya*. So at the primitive and savage age crime constituted of encroachment on other’s right. And revenge was the action of an individual against one who has done him wrong. Punishment was the action taken by the society against one who has transgressed its law.

"In the earliest times, if men, like some of the higher apes, lived in separate families, the family would, when necessary, assist any individual member of it in following up an act of revenge, because they were bound to be in sympathy
with him for the wrong done." And thus the social unity and cultural bounding were established from the earliest period.

In the ancient Greek crime was considered as an act of disobedience to a divine command, and, as such, punishable, if at all, by divine retribution; or else, in its stricter sense, as an offence against the ethical sense of the community, for which a definite punishment is prescribed by law.³

“In Hebrew there is no word exactly equivalent to Crime and Punishment. Crime was a form of 'evil' (ra), and punishment might be denoted by (g'mul) and other words for 'recompense'. Punishment being regarded as an effect of sin. In Hebrew crime, strictly speaking, is an offence against law of a State, which the State punishes, as distinguished from sin against god, and other wrongdoing of which the state takes no cognizance”.⁴

In ancient Arabia crime was often regarded as impurity, and punishment as purification. In Muslim tradition also it is mentioned that a certain adulterer who desired to do penance for his sin said to the prophet, ṭahhirni (purify me), whereupon he was stoned to death.⁵

In Hinduism concept of crime originated from the very early stages of civilization. From the very beginning references to 'Crime' were found in various texts. In the Vedic age we do not find any clear reference to judicial administration. But we find the frequent mention of the word 'Ṛta' which means the divine cosmic order by which the universe and even the gods were governed. In the Rgveda Ṛta is mentioned in many places such as, the RV. I. 68.2; I. 105.12; I. 136.2; I.142.7; I 164. 11; II.28.4.; IV 23.8-10 and elsewhere. We also find another word i.e., 'Dharma' in the Rgveda to Smṛti, which is supposed to be developed from Ṛta. Both words designate the subject law. It is a very significant term in the early literature and is defined in various angles.
P.V. Kane in the first chapter of his monumental work History of Dharmasastra has discussed the matter elaborately. He referred to various texts to explain Dharma. A few may be mentioned here. Usually the meaning of Dharma is ordinance, usage, duty, right, justice, morality, virtue, religion, good works, function or characteristics etc. The opposite of this meaning of an act is Adharma. In the Mahabharata Dharma is personified as deity (Mbh. Adi. Chap. 74.16), or in the MS. ‘vṛṣo hi bhagavān dharma- stasya’ yāḥ kurute hyalam | (8.16). The word Dharma is derived from the root vādhṛ to mean uphold to support or to nourish. In most of the cases the meaning is religious ordinance. Jaimini says, ‘codanālaśaṇortho dharmaḥ ’ i.e., Dharma is a means of the desirable goal or result that is indicated by injunctive Vedic passages.5 We find that the word Dharma mostly was related to religion and social customs but the word ‘law’ perhaps does not have such ethical significance.

The word ‘law’ is derived from English root vīlay means something set, placed, fixed or lay down. In detail the rule of action and conduct imposed by superior authority, enjoin what is right and prohibiting what is wrong.7 Though we find a Roman word lus which also have such significance like Dharma. 8

In the RV. V. 63.7 the rṣi states that Mitra and Varuṇa are the upholders of Dharma. So we may conclude that Dharma is the particle of religious life or an ordinal life which is equivalent to law. Where as the Adharma is the opposite to an ordinal life which is equal to Sin or Crime or an act perpetrated in contravention of law is a crime.

Indeed, the Vedic approach is somehow different. Rgveda is the oldest of all Vedic texts. Its approach is to pray to various Gods and Goddesses for Peace and wealth. Through these prayers, a glimpse of ancient Indian Socio-political can be had. It is a fact that Vedic nation was divided into various tribes. Rgveda also records so many powerful kings viz., Divodāsa, Sudāsa,
Purukutsu, Trasadayu, Parikṣit, Pururava and Āyu. The kings were also called by various names according to their power. Such as; 9

Ṛājā (īvam ṛājā jānānām. RV. VII. 64.3) Jyeṣṭha (jyeṣṭharājam. AV. XX. 44.3)

Adhirāja, (indro adhirājo rājasu. AV. VI. 98.1); Mahārāja, Svarā, Ekarāṭ, Virāṭ Samrāṭ

In this background, let us look into the words, which occur in the Vedic text that is concern with the concept of Crime.

• Concept of theft:

There are frequent mentions of taskara, stena and tāyu, which indicate the meaning thief. In a verse the sage prays to god that, let not the cows be lost, let no thief carry them away (Na tā naśanti na dabhāti taskarā nāsāmāmitro vyathirā dadharṣati) 10

In the RV. VIII. 29. 6 we find ‘pātha ekaḥ pīyāya taskarā yathā esa Veda nidhīnām’ i.e., Pāṣan guards the roads and know of concealed treasures as a thief does.

In the RV. X. 4.6 and I.191.5, we get that thieves were desperate and bound people with ropes and they appeared at night.

The word tāyu is found in the RV. I.50.2 ’apa te tāyavo yathā’; (of the all-illuminating sun, the constellations depart with the night, like thieves) in IV.38.5, na tāyumanu kroṣanti (as after a thief carrying off a garments), in VI. 12.5, ... ‘tāyurati dhanvā rāt’ (and rapid in movement as a fast flying thief), and in the RV. I. 65. 1, ‘paśva na tāyum guhā, (hiding thief who has stolen-an animal).
The word *stena* occurs in the *RV*. VI. 28.7 as a cattle lifter, *amā vaḥ stena īsata māghaśaṁsaḥ pari vo heti rudrasya vrjyāḥ* | then in the *RV*. VIII.67. 14 which indicates that *stena* was bound with ropes when caught, *stenaṁ badhamivādite* | in the *RV*. VII. 55. 3 where dog is asked to run after a *stena* and a *taskara*, *Stenaṁ rāya sārāmeya taskaraṁ vā punaḥsara* |

In the *Vaj. S*. XI.79 in addition to *stena* and *taskara* another word ‘malimlava’ meaning robber is found also in the *RV. taskara* is personified as robber. *Vaj.S.* states that,

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Ye jñaneyu mālīmavā: stenaṁstara vane
Ye kṣaṭyaṇeṇyaśvāṣṭāntē dṛṣṭām jñānē:  ||
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The burglars are living among men, the thieves and robbers in the wood, criminals are lurking in their lairs, these do I lay between your jaws.

In the verse V.79.9 of *RV stena* is used as a simile to dawn, *(Nettvā stenaṁ yathā ripum tapāī suro acīrśā sujāte aśvasūrte)* here we find that the expectation of dawn (sunlight) is compared with the sharp punishment of a thief. The king should punish the thief without delay, such as, the dawn is expected so early that could cut off the darkness and help the *yājamānas* for performing their rites.

The *AV*. IV. 3.2 contains charms against wolves, tigers and thieves. *Pareṇaitu pathā vṛkaḥ parmeṇota taskaraḥ* |

From such frequent mentions of ‘thief’ it seems that it was a common crime at that time. But so far as ‘how the thieves were punished at that time’ is concerned we find that king should punish them sharply but no further details are found.

- **Non payment of debt:**

We also find the reference to non-payment of debt since the time of the *Rgveda*. In the *RV*. VIII.47.17 the sage prays that, *yathā kalāṁ yathā*
śapham yatha rṣam sannayāmasi | evā duṣvapnyam sarvamāpatye sam
nāyāmasyanēhaso va utayaḥ suśitayo va uñatayaḥ || i.e. let us drive away the
evil effects of bad dream as we pay off debts.

The very word *kusīda* occurs in *Tai.S.* (III. 3.8.1-2) where higher charge of
interest is neglected. In the *RV.X.* 34.10 it is stated that gambler is afraid of
debt, nobody likes him. Every body avoids him because he may ask for money
for paying his gamble debt.

- **Gambling:**

We find the *Sūkta* 34 of the tenth *Maṇḍala* which is about gambling viz., ‘*Ākṣa
Sūkta*’ where gambler is treated as a sinner his wife, father and mother nobody
is willing to recognize him. It was such a bad habit that some times the gambler
wants to give up this playing, but at night he could not remain at home, again he
starts playing. In this *Sūkta* the ṛṣis gave a painful picture of a gambler. We
find the ethical teaching that one should not play such a bad game, which may
be the cause for deserting him from the society.

A gambler is not mentally free from anxiety of non-payment of his gambling
debt. Except this *Sūkta*, elsewhere also there are references to gambling; such
as, The *RV.* I.41.9 states that, *Caturaściddamānādbibhiyādā nidhātoḥ | Na
duruktāya sṛṇhayaḥ* i.e. for the (worshipper) loves not, but fears to speak
evil (of any one), as gamester fears (his adversary) holding the four (dice), until
they are thrown.

In the *Vaj.S.* 30 we find at the time of *puruṣamedha* or human sacrifice the
priests mention so many things while offering oblations. In the verse 30.18 we
find many words relating with gambling.

*Aṣṭarājya* *kitavām kṛtayādinaavadarsaṁ tretāyai kalpaṁ
dvāparāyādhiḥkalpina-māskandāya sabhāstānum... i.e. for the dice-king a
gambler; for the dice *kṛita* one who contemplates his adversary’s ill luck; for
the tretā a gamble-manager; for the Dvāpara a chief manager; for the Askanda one who will not leave the gambling-hall.

In another verse 30. 22 we find that the gambler was also out caste. He says that,

Aśūdrā abrahmaṇāste prajāpatyāḥ māgadhāḥ puṁscali kitavah kalibo Śūdrā abrahmaṇāste prajāpatyāḥ. i.e. a minstrel, a harlot, a gambler and an eunuch neither of Śūdra nor Brāhmaṇa caste are to be dedicated to Prajāpati.

In the RV. VII.86.6 it is said that dice is made of vibhūdaka trees are one of the source of sin. (Sā surā manyuvibhūdaka acittiḥ).

In the RV X. 42.9 and X.43. 5 god Indra is compared with the choosing power of a gambler. While gaming dice the gambler selects his adversary and wins over him. Such as, Indra wins over his adversaries.

The AV. IV.16.5 and IV. 38 are the charms for success in gambling. There are more references to this vice in Vedic literature.

- Offences of abusive language:

In the Pañcaviṃśa Brāhmaṇa (14.6.6) we find the story of Vatsa and Medhātithi. Once Medhātithi reproached Vatsa, that “you are not a Brāhmaṇa, you are the son of Śūdrā mother”; (Vatsam medhātithiḥ apadabrahmaṇo ’si śūdrāputra iti).

Vatsa protested this and he entered into fire and came out of fire untouched. The fire burned not even a hair of him. Prohibition for reviling a Brāhmaṇa is found in the Tai.S. II.6.10.1 where it is stated that reviling a Brāhmaṇa is a great sin.

- Assault:

The Taittirīya Samhitā (II.6.10.2) probably the earliest reference to fines for assault. The verse says, that he who threatens to strike a Brāhmaṇa shall be fined with a hundred (cow or niṣkas?); he who strikes him shall be fined with a
thousand; he who draws blood from him shall not behold the world of the *Pitr̥s* for as many years as there are the grains of dust which the blood in its fall seizes upon. Therefore, one should not revile a *Brāhmaṇa*, nor strike him, nor draw blood from him, for so great is his sin.

*(yo brāhmaṇāyāpagramatī tam śatena yātayā, yo niḥaṭam sahasreṇa yātayā, yo lohitam karadyātipraskadyā pāmsūn samgrhṇātāvataḥ samvatsarān pitṛlokam na prajānādīti *)

This passage is interpreted in *Jai*. III. 4.17 as being a recommendatory injunction (*puruṣārtha*) to all at all times to desist from assaulting a *Brāhmaṇa*.11

- **Adultery:**

In the *RV*. IV.5.5 we find that adultery was treated as a crime. In this prayer *ṛṣi* expresses the views that, like women who have no brethren, going (about from their own to their father’s house), women adverse to their lords going astray, so the wicked, false in (thought), false (in speech) they give birth to this deep abyss (of hell).

अभ्रुतरो न योषणे व्यक्त: पतिरिपो न जनयो दुरेवाः।

पापसः सन्तो अनूता असत्य इदम्पदमजनता गमीरम्।।

In the later texts adultery is treated as heinous offence which is the cause of cross-nation.

In a simile with the Ùṣā the poet expresses that, Ùṣā cuts off the darkness as the barber cuts hair, such as a dancing girl who bares her bosom as cow yields her udder to the milker.12

In the *Tai. Samā.* V.6.8.34 it is said that after piling the fire he should not have intercourse with a woman of pleasure, thinking, ‘I shall deposit seed in that which is no womb’; nor after piling for the second time should he have
intercourse with the wife of another, nor after piling for a third time should have intercourse with any woman whatever”.

- **Incest:**

Incest was prohibited since the Vedic period. But it is believed that the root of this crime is found in the earliest society. In the RV X.10 the conversation between Yama and Yamī clearly indicates the fact, where Yamī approaches to her brother Yama for making an illicit sexual relation. Here, Yamī was very passionate and she tried to motivate her brother by any means. But Yama was so determined that he had refused his sister’s approach showing her that this relation or union is not permitted by the ancestors. He advised his sister to embrace another to seek his affection and make a happy union. Another well known reference regarding incest is found in the Rgveda. In Aitareya Brāhmaṇa III.33 the legend refers that Prajāpati approached his own daughter. Elsewhere the daughter of Prājāpati is understood as earth.

- **Political crime:**

It is quite clear that the people did not always like royal policy, so that as an outburst of resentment some political crimes were committed. In the Tai. S. II.3.1 we find that kings were driven away when the people did not like them.  

- **Dayabhaga:**

The word dāya means share. In the Rgveda mainly the partition of inheritance of ancestral property among the sons. In the Veda we get frequent mention of it. The Nābhānedīṣṭha story of the Tai.Sam. (III.1.9.4) states that Manu divided his dāya among his sons. i.e., ‘Manu putrebhy dāyam vyabhajat’

The Tan. Brā. (16.4.3-4) provides a special share according to the supremacy of the yield.
‘Tasmādyah putrāṇām dāyāṁ dhanatamamivopaiṁ tam manyante yamevedāṁ bhavisyati iti’

The Tai. S.VI. 5. 8.2 destituted the woman from share of property, it states that ‘woman are powerless, have no inheritance, and speak more humbly than even a bad man’. “Tasmāt striyo nirindriyā adāyādīrapi pāpātipuṁsa upastitaraṁ vadanti”

In the AV. V. 18.6 we find Brāhmaṇa must not be injured, it is also said that soma is the dāyāda (kin) of him.

न ब्राह्मणो हितसतःद्विन: त्रियतनोरिव ।
सोमोहर्षस्य दायाद हन्तू अस्याभिषक्तिःः ॥

**Prostitution:**

Prostitution and exposure of child are ever seen in the Āryan society. It is true that birth of a girl was not at all popular in the earliest society. And also the families exposed the illegitimate child. We find the reference of prostitutes and illegitimate children in the Rgveda. In the RV. I.124.7 we find that brothers less girls were frequently reduced to becoming prostitutes.

अभृतेव पुंस एति पृतीची गर्तुण्मिच सन्ये धनानाम् ।
जायेव पत्न उत्तानी सुवासा ऊषा हस्तोव नि रिप्रते अपसः ॥

The illegitimate child is referred to in another verse 15 Dhrtavratā ādityā īṣirā āre matkarā rahasārīvagāḥ | i.e., oh! The sun (āditya) upholder of law, remove my sin, like a woman delivered in secret. Here rahasārīvagāḥ is explained ‘rahasyanyairajñāte pradeśe sūyata iti rahasāvyrthicārini’ like a prostitute or loose woman who has a child privately and who abandoned it in some distance place.

In the AV. XV. 2.5 the term ‘pumścali’ (śraddhā pumścali mitro) and XIV.136, XX. 136.11, the term ‘mahānadhnyā’ clearly indicate the paramours or prostitutes.
The Vāj. Sam. XXX.6 states ‘kumāriputra’, the son of a damsel or in the Rg. IV.19.9 and other verses state son of an unmarried girl (putramagruvo adānaṁ...).

There are very few references of judicial administration in the earliest literature considering the military and other civil administration.

An exhaustive additional list of the functionaries is found in the puruṣamedha of Vājasaneyi Samhitā (XXX), where we get Praśnavivāka as a judge.

They are:

1) Takśan (carpenter);
2) Praśnavivāka (judge);
3) Hastipa (commander of the elephant division);
4) Aśvapa (commander of the cavalry);
5) Prakarita (distributor);
6) Kṣattā (chamberlain);
7) Bhāgardughā (collector of taxes)
8) Vanap (forest officer);
9) Dāvapa (officer of the forest fire brigade).

Here praśnavivāka might be the earlier synonym of later prādvivāka who is treated as the chief justice in the Smṛti period. The Vedic seers in the Rgveda urge a fair administration. We find in a verse where Seers pray to Ka for a clean administration, they say that, Yasya viśva upāsate praśiṣaṁ yasya devāḥ.16 Sāyaṇa explains the word ‘praśiṣa’ as ‘prakṛṣṭa sāsana’. But reference of a regular civil service is not found there. Let us see some word, which may represent the witness of judicial system.

- Chief justice:

In the Rgveda we find dharmanāma dhyakṣaḥ. In the DŚ and AŚ adhyakṣa is widely used as head of the department, in the Vedā period, it also stands for the
same meaning. Here, \textit{Dharmaṇām adhyakṣya} is Agni as the chief justice. The verse runs as follows:

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\begin{center}
\textit{विशां राजानमदपुतमव्यक्तं धर्म्णायिमम्} \text{अनिमीवे स उ ज्ञूतं ।}
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(I praise this Agni, the sovereign of men, the wonderful, the superintendent of holy acts; may he hear me).\textsuperscript{17}

- **Witness:**

There is a verse in the \textit{AV.VI.32.3} \textit{“ma jñātāram mā pratiṣṭhām vidanta”}

Here the word \textit{jñātāram} is meaningful, Zeimer thinks that the word represents ‘witnesses’.

- **Ordeals:**

It is an individual mode to purify oneself. In the \textit{Smṛti} period we find various modes of ordeal \textit{viz.}, fire, water, \textit{tulā}, poison etc. These were administrated by oneself or through the court. Sometimes, when the victim wants to prove his/her purity not believing the human proof then he administers these purity texts. Also in some cases when there was no human proof and if the parties have no objection the court may administrate the process of ordeals.

The story of the \textit{Pañcaviṃśa Brāhmaṇa} (14.6.6) that might be the earliest and clearest reference of fire ordeal. Manu also referred to this story in \textit{MS} (8.116). It is said that, Vatsa who was the son of \textit{ṛṣi} \textit{kanyā} was abused by his step brother that he is the son of a Śūdrā mother. Vatsa protested this and urged that he was a \textit{Brāhmaṇa}, to prove the fact he entered into the fire and came out of fire unscathed.

Another simile is found in \textit{RV. I. 158.4} where the seer prays to \textit{Āśvinis}, that ‘preserve the son of \textit{ucaṭhya’}, they say ‘let not the ten times kindled fire burn him’.

\begin{quote}
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\begin{center}
\textit{(mā māmedho daśatayaścito dhāk pra yadvāṁ baddhastamani khādati ksām}} \rule{0.7cm}{0.1em}
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In the same Sūkta (1.158.5) we find the reference of water ordeal. He prays that oh! the most maternal streams (water) wherein the Dāsas caste me securely bound, have not devoured me.

Na mā garannadyo mātrtamā dāsā yadīm susamudhamavādhuḥ

1.2 Buddhist and Jain literature:

We have discussed the crimes reflected in the Vedic literature. In the Buddhist literature which comes much later than the Vedic period through, the Jātakas we come across some references to the judicial system and the heads of lawsuits in the Buddhist order. The term used for lawsuit is aṭṭa and the suitors are called aṭṭakārakas. The judge was called vinicchayāmacca. In one Jātaka the number of judges is given as five. (Tassa pana rañño pañca amaccā...vinicchaye niyutta).

The king was the head of the judicial system. In the absence of the king some of his ministers decided the cases, e.g. purohita, the senāpati and sometimes the princes. The idea reflected in Jātakas regarding crime is that crimes are for the most part committed by the irreligious people and the punishments are determined upon and carried out from the political or legal rather than from religious motives. Let us now proceed to have a glimpse of the nature of the cases, which come before the court for adjudication. Among the cases theft and robbery were very common. In a story we find that a simple rustic (jānapada) who was blamed for the theft of queens pearl necklace and forced to plead guilty of charge. The man confessed that ‘if I deny the charge, I shall die with the beating, I shall get from this ruffians. I’d better say I took it’. Thus the man had to confess.

Among the various types of crimes these are the most important discussed in the Jātakas:
(a) Theft and robbery;
(b) Non return of oxen taken on loan;
(c) Miscarriage;
(d) Murder;
(e) Injury to a horse;
(f) Disputes regarding ownership;
(g) Disputes regarding courtesan;
(h) Disinherits son;
(i) Drinking of wine;
(j) Using Slander language, or abuse;
(k) Adultery; and
(l) Highway robbery.

These are the lawsuits found in the Buddhist Jātakas. We will discuss the punishment in the next chapter.

To look into the Jain literature we find that like other sects Jain tradition also accepted that king is the fountain of justice. Among the various kinds of offences, which are found in Jain texts, the following are the chief:

(a) Crimes related to inheritance;
(b) Theft and robbery;
(c) Adultery;
(d) Non – execution of king’s order.

There are ample references in the Jain texts regarding these offences. In short we can say that in the Jain canons we do not find a systematic administrative organization. The matters are in Jātaka form and isolated and scattered. It may not be compared with AŚ and DŚ, which are the manuals of administration. In fact previously the kings were Hindu. As Buddha and Jaina are very close to Vedic tradition in judicial systems and the administrations were almost similar.
1.3 Sūtra period:

After the Vedic period let us see the Sūtra period. Sūtra is the concise form of expression. Vararuci defines Sūtra as,

अत्याक्षरम् अस्निदग्धम् सारवतः विररतो भूतम्।
अस्तोभमनवदयम् च सत्तम् सुतिविदो विदु: ॥

Ram Gopal says, “A sentence composed in this peculiar style is called a Sūtra, i.e., a thread; for diffuse and scattered percepts are succinctly systematized in a compact sentence called Sūtra in the same way as loose fibers are compressed into a thread. By extension of metaphor, a work consisting of such Sūtras is also known as a Sūtra.” 23

The Sūtra period contains a vast literature. Pāṇini is the prominent Sūtrakāra at this period. A new era of Sanskrit literature started from Pāṇini. Among the various types of Sūtras composed in the Sūtra period kalpasūtras are most important for ancient Indian cultural and legal history. It is also treated as one of the six Vedāṅgas. Kalpasūtras comprise Śrautā, Grihya, Śulbasūtras and Dharmasūtras. Among these, Dharmasūtras deal with the legal matter. There are so many Dharmasūtrakāras, such as, Gautama, Baudhāyana, Āpastamba, Hiranyakeśi, Vasiṣṭha, Hārīta and Sarṇkhaliṅkhita. Most of the scholars are convinced that these Sūtrakāras were flourished between 600 B.C. and 200 B.C. Another important point may be noted that the Vedas are treated as the ultimate source of Dharma or law by all the Dharmasūtrakāras.

In the ancient India Dharmasūtras (DS) were the first which prescribed the legal matters. In the Sūtras we find full-fledged judiciary, where the king is said to be the head of the judicial as well as administrative system. He was the head of the monarchy assisted by purohita and a group of civil and military officials.
In all the times fair administration and administration of justice laid a great contribution to the development of the state. From the very begin fair justice is the expectation of human beings. Sūtras provide the codes to fulfill this demand. Gautama enjoins upon the king to inflict lawful punishment on offenders. Āpastamba says that if the king does not punish a punishable offence the guilt falls upon him. 24 The later Smṛti texts urged to administer a fair justice. So, to make the justice fair king himself administer justice of court.

** Judges: **

Generally king himself acted as a judge (Prādvivāka) to administrated justice. When the king was not able to dispense the justice he may appoint a learned Brāhmaṇa for administering justice. Gautama says, Rājā prādvivāko brāhmaṇo vā śāstravit. 25 He further states that the utmost duty of a man is to speak the truth before the court when he is asked by the judges. 26 Gautama also recommends a council of judge’s pariṣada a combination of at least ten members who are free from greed, learned in the Vedas for giving decision of the complicated and doubtful cases.

Baudhāyana also suggests a ten members council but he prefers for the normal cases five or three members in a bench even one blameless man may be given justice but in the difficult cases one man must not propound the judgement however, learned he may be. 27 He also warned that Brāhmaṇas who have not fulfilled their sacred duties, unacquainted with the Vedas and subsists only by the name of their caste could not form a legal assembly for declaring the sacred law. 28

Regarding the qualifications of the judges Āpastamba says, 29 Vivāde vidyābhijanasam- pannā vrddhā medhāvino dharmeṣva vinipātinaḥ | i.e. Men of learning, pure descent, mature age clever in reasoning and careful in fulfil the duties of caste and order, shall be judges in law suits.
Vasiṣṭha says, that\(^{30}\) *Atha vyavahārāḥ || Rājā mantrī vā sadaḥ kāryāṇi kuryāt ||* i.e., now legal proceedings. Let the king or his minister transact the business on the bench.

**Judicial procedure:**
In the *Sūtra* period we find the plaint and reply system of proceedings. The plaintiff has to approach the judge humbly to seek justice. Gautama says,\(^{31}\) *Prāḍvivākamadhyā- bhavet.*

The plaintiffs have to produce enough evidence to prove the case. It is interesting to note that sometimes defendants were privileged to reply upto one year. But in some cases they defendants have to submit his defense immediately. The *Sūtras* may be quoted here,\(^{32}\)

*Saṁvatsaram pratīkṣetapratībhāyām | Ātyayike ca ||*

**Evidence:**
It is the most important element of judicial proceedings. Vasiṣṭha says,\(^{33}\) *likhitam, sāśiṇo and bhuktih* i.e., written documents, witnesses, and possessions. Gautama says, in disputed cases truth shall be established by means of witnesses.\(^{34}\)

We find a number of people who are allowed for testimony. But one should not make himself witness until he is asked by the king. False testimony is also treated as a crime. Āpastamba ( II. 11. 29.6), laid down that in doubtful cases the truth should be ascertained by inference, ordeals and other means.

**Judgement:**
After judging the plaint and defense with evidences judges should ascertain the truth and deliver Justice. It was the foremost duty of a judge to deliver an impartial and fair judgement. A very important point which is also the spirit of modern law is found in this period, i.e., the benefit of doubt is always given to
the accused.\textsuperscript{35} (\textit{Na ca sandehe da\=nd\=am kuryat}). In the \textit{AŚ} we find that when a case is not proved the benefit goes to the king, not to the accused nor to the plaintiff.

In the \textit{Sūtra} period concept of crime and modes of punishments were distinct. One may also say that the concept of crime comes through the concept of \textit{Dharma}. The acts which are sinful or out of social norms and customs constitute crime. We get clear conception of lawsuits in this period. Under many heads judges prescribed punishment in the \textit{Sūtra} period. Some of them may be discussed.

The authors of the \textit{Dharmasūtras} were influenced by the Vedic \textit{Varna} system. So punishment depends upon a person which caste he belongs to. The heads of the law suits that are discussed in the \textit{Dharmasūtras} are: (a) Inheritance (b) Non payment of debt, deposit, etc. (c) Breach of contract (d) Damages to Crops (e) Abuse, assault and homicide (f) Theft (g) Rape and Adultery (h) Violation of caste order and duty (i) Abduction (j) Drinking of spirituous liquor (k) Escaping taxes, and (l) Abatement.

**Inheritance:**

Law of inheritance is discussed in various dimensions such as, partition of patrimony and order of succession, self acquired property of re-united persons, excluded from inheritance, property of childless people, property of the minors, \textit{strīdhana} and treasure-troves, etc.

Baudhāyana \textsuperscript{36}, divided the property among the heirs i.e., shares shall be divided to the nearest heirs (\textit{sapiṇḍa}) next kinsmen (\textit{sakulya}) in the absence of these heirs, the spiritual father or pupil or an officiating priest shall take over the property. On failure of these heirs, the king shall take over the property. \textit{Vasiśṭha} distributed shares among the twelve kinds of sons. \textsuperscript{37}

Normally, the partition of patrimony occurs after the death of father. Gautama says property can be divided in father’s lifetime when mother is past the age of
child bearing. He also says doubtful cases should refer to the council of justice (pārīṣada) which is the bench of ten members. 38 Āpastamba also discussed the matter in details (II . 6.14). The additional share of the eldest son is also found in the Śūtras.

• Non-payment of debt:
Debt was permitted at that time on behalf of prescribed rate of interest. Vasiṣṭha states the rate of interest as two, three, four and five percent. He says, 39 'dvikām trikaṁ catuṣkaṁ ca paṇcakaṁ ca sātakaṁ smṛtam'.
Excessive charge of interest is condemned. In one Śūtra vārdhuṣika is condemned as a great sinner than a slayer of a Brāhmaṇa (brahmahantāḥ). (Brahman) weighed in the scales the crime of killing a learned Brāhmaṇa against (the crime of) usury; the slayer of a Brāhmaṇa remained at the top, the usurer sank downwards). 40 Āpastamba exhibits a list of the persons whose food should not be taken, usurer is one of them. 41 Heirs were bound to pay debts. Gautama, says 42 Rikhabhāja paṇm pratikuryuḥ || So, it was a regular head of lawsuit at that time. Deposits and other types of debts are also found in the sūtras.

• Breach of contract:
Āpastamba (II. 11. 28.1-6) says, if a person who has taken land on lease for cultivation, does not exert himself and due to this the owner of the land faces loss of crops, the person/the owner has to compensate. The offence may be treated under the head of breach of contract. Same rules prevail regarding disputes between the herds-men and the owner of the cattle.
**Damage to Crops:**

Damage of crops was treated as crime and punished by compensation or fine. But the owner of the land should provide fence around the crop field. Normally the herdsman and the owner of the Cattle were punished. Āpastamba also prescribes punishments to the herdsmen for destroying crops.\(^{43}\)

**Abuse, assault, and homicide:**

Abuse and assault are found as criminal offences at sūtra period. Punishment is given as per the caste for this offence, i.e., Śūdra was severely punished. For reviling a Brāhmaṇa the tongue of a Śūdra shall be split out.\(^{44}\)

In case of assault cutting of the limbs by which one hurts another was the general rule.\(^{45}\) For homicide one should be punished to death except Brāhmaṇa.\(^{46}\) Sometimes, it was compensated with heavy fine such as, one thousand Cows, etc.\(^{47}\)

**Theft:**

It was a very common crime in the Sūtra period. Punishments and penance both are prescribed for theft. A gold thief who approaches to the king carrying with a club or pestle (musali) for punishing him for his offence. And king should hurt him to get free from guilt.\(^ {48}\) Nobody was left out from punishment, sometimes upper class people received more penalty than the lower caste. Gautama says,\(^ {49}\)

\[ Aṣṭāpādyam steyakilbiṣam śūdrasya, dvigunottarāṇītāreṣāṁ pratīvarṇam, \]
\[ viduṣo ' tıkrame daṇḍabhūyastvam || \]

i.e., at the same offence of theft when a Śūdra is suffered eight fold punishment then a Vaiṣya sixteen fold, a kṣatriya thirty two fold and a Brāhmaṇa sixty four fold. An important provision is found in ĀDS (II. 11.28.12) that one may steal when his life is in danger of starvation.
• Rape and adultery:
It was treated as a heinous crime in the Sūtras. All the Sutrakāras were aware of this crime. Violation of guru’s bed was a great sin (mahā pātaka). Women are also punished for adultery. Cut of the genital organs and capital punishment has randomly prescribed in the Sūtra. There are ample of references regarding this context in the Sūtras. Lusts or bestial crime also is found in sūtras.

• Violation of caste order and duty:
It was treated as a crime ĀP. Says that the tongue of a Śūdra who speaks evil of a virtuous person, belonging to first three castes shall be cut out and if a Śūdra assumes a position of equality with the Dvijas in sitting or sleeping or on the road, or in the road on a couch, he shall undergo the corporal punishment.

\[ \text{वाचि विपि स्थायमासि इति समीभवतो दण्डिताहि } \]

Śūstras were not allowed to hear or recite the Vedas. Gautama says, if a Śūdra intentionally hears the Vedic recitation, his ears shall be poured with molten tin or lac. If he recites the text his tongue shall be cut off. There are so many references in this respect.

• Abduction:
Crime like abduction with criminal intention is found in Sūtra. Vasiṣṭha says,

\[ \text{अन्यस्मै विविधद्वेश्या यथा कन्या तथैव सा } \]
i.e., if a damsels has been abducted by force, and not been wedded by the recitation of sacred texts, and if the marriage had not been consummated she may be married again.

• Drinking of liquor:
For intentional consuming of liquor a Brāhmaṇa shall be killed by pouring hot liquor into his mouth. Gautama says, 55 surāpasya brāhmaṇasyoṣaṇamāsīnceyuḥ surāṁasye mṛtah śudhyet | For unintentionally consummation of liquor he prescribes penance of various modes.

- Escaping taxes:

There was a government setup for collecting taxes from the subjects. According to Vasiṣṭha the persons who were free from paying taxes, are Śrotṛiya, king’s servants, who has no protector, one who has left the order of householders, an infant, a very aged man, a young man and a woman who has produced a child. Vasiṣṭha says, 56 'Akaṇaḥ śrotṛiyo rājapumānanātha pravrajitabāla vrddha taruṇa prajātāḥ’ so, the other persons who try to escape from the taxes and toll shall be fined by the king. Vasiṣṭhasūtra prescribes a fine to the offender who across a river by swimming for escaping the toll of a ferry shall pay one hundred times the amount due.

- Abetment:

It is noteworthy that Sūtras are providing provisions for punishing not only the criminals but also the abettors.

For example, Gautam says, 57 Corasamaḥ sacivo matipūrve || i.e., for aiding a thief or receiving a stolen property a man is to be treated like a thief.

This is a brief of crimes or lawsuits in the Sūtra period. In the Vedic texts the idea of lawsuits was hazy but in Sūtra period we find the clear concept of crime and lawsuit as Dharmasūtra devoted to the subject. It may be treated as a massive development through this age.

1.4 Smṛti to modern age:

The next phase is Smṛti period. This period may be treated as the mature period of ancient Indian legal system. The word Smṛti is used both in the wider and
narrower sense. In the wider sense it includes all non-Vedic ancient texts, such as, Kalpasūtra, two epics, AŚ., Aṣṭādhyāyī of "Pāṇini, MS., YS. and others. In the narrower sense it is the synonymous of the DŚ. as Manu says, dharmasāstrantu vai Smṛtiḥ. 58

This narrower sense of Smṛti however, is our concern. Though the two epics have prescribed numerous passages on the DŚ which is treated as the authority of the DŚ in the later medieval period, we are concerned here with the Dharmasāstra alone.

There were so many Smṛtiikārs in ancient India. Yaj. mentions the name of twenty Smṛtikars namely, Manu Atri, Viṣṇu, Hārita, Yaj. Uṣanā, Angirā, Yama, Āpastamva, Saṁvartā, Kātyāyana, Vṛhaspati, Parāśara, Vyāsa, Śāṅkha, Likhitā, Dakṣa, Gautama, Śatātapa and Vasiṣṭha. 59 In a slight variation Parāśarasmṛti also mentions twenty names. 60 In the Padmapurāṇam we find 36 names. 61

However, all the texts are not available. Probably most of the authentic Smṛjis are compiled between 300 B.C. and 300 A.D. also Smṛjis are written over upto 900 A.D. This is called the mature period of legal system. In chapter third, fourth and fifth we will discuss about the development of this period in detail. There is a clear concept of lawsuits. Manu prescribes 18 heads of lawsuits, which cover all crimes at that time. Most of the authors are concerned about these crimes. In this period we find the division of lawsuits into civil and criminal cases.

After the Smṛti period these Hindu laws passed through a difficult period which may be treated as medieval period. This time India faced so many foreign innovations especially by the Muslims such as the Pathan and the Mughal rulers. Since 1204 A. D. onwards to the British innovation the Muslim rulers were in rule. By this time, Muslims imposed their own system of law and
justice. The Muslim rulers stressed on the Islamic law based on *Quran* and Sunna. In this regards, “two important things are to be remembered: - (a) the famous chain of justice established by Jehangir, (b) the law administered by the judges was chiefly sacred law: viz., (i) Quranic injunctions, (ii) Samas or *Hadis* or sayings of the prophet, (iii) *Fatwa* or the previous interpretation of holy law by eminent jurists (iv) Digest prepared from time to time e.g., Hanafi, Malaki, the Shafi and Harbali. The twelve ordinaces of Jehangir and Fatwai-i-Ālamgiri of Āuranzeb were the two important digest of Mughal period" 62

These foreign rulers were somehow anti Hinduism so, by this time they destroyed valuable Indian Hindu culture and MSs of ancient Indian literature. It is a well known fact that Sultan Mohammad of Gajani robbed the Somanath temple 17 times and destroyed it. Muslims ruled even most part of India except some places, like Maharashtra where Chatrapati Shivaji was ruling over.

In the eve of British Empire the new approach of Dharmśāstric Studies begin when the *DS*. fell into the modern scholars, mainly Europeans. The British started to rule over India in the year 1757. Very soon they established their rule all over India. To execute law and order they feel the necessity of some original law in both civil and criminal cases. In this regard the legislature of Great Britain passed its famous regulating act in 1773 and this gave power to his Majesty the king to set up by charter a Supreme Court at fort William. The right of Hindus to have their own civil laws was established and there was an immediate necessity of a code of Hindu law, understandable to these foreign administrators of justice. But the main problem was that who would prepare the law. The British scholars did not know Sanskrit and the Indian Paṇḍits were not able to learn English. Lastly, batches of eleven Brahmins were entrusted to prepare the codes of Hindu law. These traditional Indian Scholars composed their work on the basis of the *Krityakalpataru* and *Pārijāta* the works of 1000
A. D. And thus the first English treatise was published in 1776 by the name “A code of Gentoo laws or Ordinations of Paṇḍits”.

The British rulers started to follow these codes mainly for civil cases which do not represent the spirit of Hindu codes. B.C. Mallik calls these codes as “notorious gentoo codes”.

In 1947 India achieved independence after a long civil war against British rule. The chief law books, which are existing at present, are the code of criminal procedure code (1898) and the Penal code (1860). At present it is difficult to count down the lawsuits as Manu Categorized under 18 heads. We know that law grows as a nation grows. At the same time we cannot ignore the increasing rate of crimes and complexity of human civilization so, through the ages as the nation developed in various aspects at the same time various types of crimes come forward which cannot be classified in number. The concept of crime which exist now a days is ‘an act which is punishable by existing law.’
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