Chapter Five

Crime and Punishment in Yājñavalkya
Crime and punishment in *Yājñavalkyasmṛti*

5.0 Introduction:

*Yājñavalkya* (Yāj.) the noted *Smṛtikāra* of the ancient India is treated as the second highest authority in the history of *Dharmaśāstra* (DS) his prominent work is the *Yājñavalkyasmṛti* (YS). He was the man of Mithila the northern part of India. In the second verse of YS we find his reference to Mithila (*Mithilāsthāḥ sa yogindraḥ* 1.2.). Viśvarupa the veteran commentator of YS flourished somewhere between 750 AD and 100 AD. He wrote in his commentary *Bālakrīḍā* that he was separated from Yaj.by many centuries.¹

Yāj. mentioned the *Veda, Vedāṅgas, Purāṇas, Nyāya, Mīmāṁsā* and the *Dharmaśāstra* as the sources of knowledge. He also mentioned twenty *Smṛtikāras* who propounded various *Smṛtis* for mankind. In this list Manu is placed in the first position. So, he is later to Manu and these *Smṛtikāras.*²

There is also a hypothesis that there were many Yāj living at different times who propounded *Smṛtis* (laws) Yāj is the surname of these lawgivers and once the works were compiled by someone.

Considering these factors P. V. Kane in his monumental work, *History of Dharmaśāstra* placed Yaj. somewhere in between 1st century B. C. and the 3rd century A. D. But in the chronological list of the authors in this treatise he placed Yāj. in between 100 AD.³

Whatsoever might be the date of Yaj. the book is existing by name *YS* and there is no doubt that he is the successor of Manu. It is also said that Yaj. reduced the voluminous work of *Manusmṛti*, by avoiding repetition of the verses, he also tried to make treatise systematic. He often compresses two verses of Manu into one. Many examples can be given to explain this. Such as; the verses of *MS*.

253
2.243, 247, 248 are equal to YS 1.49; MS. 3.46-48 and 50, are concisely put in the verse 8 YS 1.79; MS. 4.7, 8 equal to YS 1.128; MS. 4.84.85 YS 1.141 etc.
In a few cases Manu and Yaj. conveyed the same meaning in one verse without compression, such as. Manu 3.70 and Yaj.1.702; Manu 3.119 and Yaj.1.110; Manu 7.171 and Yaj.1.348; Manu 7.205 and Yaj.1.349 etc. it seems that Yaj. has taken an attempt to condensed or abridge the some what loose expressions of Manu. 4

5.2 Contents of the book:
Yājñavalkyasmṛti is a book of three chapters, viz., ācāra, Vyavahāra and prāyaścitta. The whole book is written in the classical Anuṣṭubh metre. There are some controversies regarding the number of the verses in the YS in various editions. The edition of Nirmaya Sagar press (1892) contains 1010 verses with the commentary of Mitākṣara. The Trivandrum edition with the commentary of Viśvarupa contains 1003 verses, and the Ānandāśrama edition (1903-1904) from Pune, with the commentary of Aparārka by Aparāditya contains 1006 verses. At present there are many editions of YS but the above editions are considered as the most authentic. 5 A recent edition of Cosmo-publication ed. by M.N. Dutt has presented 1013 verses but in the introductory note of this edition he says that 'YS is a book of three chapters and containing 1023 couplets. 6
The causes for differences in number of the verses are noted down by P.V. Kane in his work History of Dharmaśāstra, (vide. Vol. I, pp. 169-70, 1930.) into which we need not to go.

5.3 Other works:
There are three other works with the name of YS viz., Vṛddha Yāj. Yoga-Yāj. and Brhad-Yāj. but the discussion of this chapter will be limited in to the YS.
5.4 Commentaries on YS:

There are at least five commentaries of YS written by five commentators. They are:

(1.) Bālakṛtidā by Viśvarupa is the first extent commentary of YS the commentator who flourished about 800-825 AD.

(2) Mitākṣara by Vijñāneśvara (Vijñā.) is the famous commentary on YS. It acquired the unique position in the history of DŚ. It was esteemed as a paramount authority by the British Indian courts in case of inheritance. He was the chief guide of the Benares school of thought. We find five schools or divisions of Hindu law of inheritance even at the medieval period, viz., The Goudiya (Bengal) Benares, the Mithila (North Bihar), the Maharashtra and the Drāvida. Among these Benares was guided Mitākṣara and the school of Bengal was guided by Dāya-bhāga of Jīmutavāhāna. These two were the paramount authority of the law of inheritance in ancient India. It was even followed in Orissa. At present, Indian Government has ruled out the authority of YS and other religious authority by the 'Hindu succession Act, 17th June, 1956. But Dāya-bhāga still rules in Bangladesh.

(3) Aparārka is the commentary made by Aparāditya;

(4) Dipikālikā is the commentary by Śūlapāṇi; and,

(5) Viramitrodaya is the commentary made by Mitākṣara.

5.5 Summary of the Yājñavalkyasāṁti:

Though there are three other works of Yāj. we will confine our analysis to YS only. Before going through the judicial procedure and the individual heads of crime as well as punishment propounded by Yaj. we intend to place a concise summary of the YS like other Smṛtis the book is divided into three parts viz., Ācāra (b) Vyavahāra, and (c) Prāyaścitta.
(a) Ācāra chapter: This chapter contains 368 verses which deals with fourteen vidyās, twenty expounder of dharma, duties of brahmacāri, marriage, duties of students, duties of householders, privileges and duties of four varṇas, rules for the purification of food and drink, gifts, rules for śraddhā, propitiatory ceremonies as regards vināyaka and nine grahas and rājadharma.

(a) Vyavahāra chapter: This chapter contains of 25th sub-chapter in 307-310 verses. First we found the judicial procedure as such the crime and punishment as well.

(b) Prāyaścitta chapter: This chapter deals with the Prāyaścitta and some other social and religious rites containing approximate 334 verses. These are the brief summary of YS our discussion will be confined mainly with the second chapter of the YS

5.6 Subject matter in the court:
In the vavyahāra chapter of the YS we find that Yāj. divided the chapter into 25 sub-chapters and discussed the subjects serially. They are:

1. General regulation,
2. Exceptional regulation,
3. Debt (Ṛṇādānam)
4. Pledges and deposits (nikṣepa),
5. Witness (sākṣī),
6. Written documents (lekhyam),
7. Ordeals (divya prakaraṇam),
8. Inheritance (dāyavibhāgaḥ),
9. Boundary disputes (sīmā vivādaḥ);
10. Disputes between owner of the cattle and his servant, (svāmipāla vivāda)
11. Sale without ownership (asvāmi vikraya);
(12) Resumption of gifts (dattāpradānikam);
(13) Rescission of purchase (kṛitānuśaya);
(14) Law relating to breach of contract or engagement between master and servant (abhuyupetyāśuśrusā);
(15) Non-performance of agreements or contract (Samvidvyatikramam);
(16) Non-payment of wages, (vetandāna prakaraṇam);
(17) Gambling and betting (dyūta samāhvaya);
(18) Defamation (vākpārāsyā);
(19) Assault (daṇḍapārṣya);
(20) Robbery (sāhasam);
(21) Laws relating to non-delivery of articles sold, (vikritāyasāmpradānam);
(22) Co-partnership transaction (sambhāyasamutthānam);
(23) Theft (steyam);
(24) Adultery (strīsamgrahaṇam);
(25) Miscellaneous rules (prakṛṇakam).

From the above list of lawsuits it is clear that Yāj. does not differ much from the MS.

5.7 The court and the judges:
Let us see what Yāj. says about the court, judges and their qualification. He states,

व्यवहरारूपः पर्येधित्विजित्तिशिलोऽसः ।
धर्मशास्त्राः प्रस्तुताः कोशलाभोविजित्तिः ॥

The king himself should administer the lawsuits accompanied with learned Brāhmaṇa divested from anger and avarice. The king should also appoint some assessors who possess the Vedic knowledge, who are conversant with law of morality, truthful and impartial towards friends and foes.
When the king is not able to administer the cases personally he will appoint a Brāhmaṇa who knows all forms of religious duties (*sarvadharma*vita) he will work along with the assessors. They should act properly in the absence of the king. If these people out of anger avarice and fear fail to do the work properly and make a judgement that is contradictory to law they should be punished (each of them) double of that the victim achieved.

In the sub-head of the general regulations he discusses the four-fold character of litigation viz., the plaint, the answer, the proof and finally the decision. When others aggrieve a person in a way contrary to the Smṛtis and the established usage may complain to the king’s court. A lawsuit commences when a person comes with complain about whatever injustice is done to him. The court should write it down accordingly. If there is anything missing the plaintiff should rewrite it because the plaint is the basis of the judgement. Whatever some one claims, if it is found to be true after the proof then he will get remedy. So a claim is the important element of a judgement.\(^7\)

In the sub-head of exceptional regulations, there is an important guideline that a defendant shall not bring a counter charge against the complaint till he is acquitted from the charge framed against him. He has to clear the allegation first and then he can issue another lawsuit. However in case of an assault, abusive language and robbery (*kalahe sāhaseṣu ca*) counter charges are allowed. In these cases the judges should take substantial surety for bail from each party.\(^8\)

The court strictly punished any type of falsehood at that time. When a monetary claim advances to the court, the judges will ask the defendant whether the claim is due or not. If it is denied and afterwards good evidences establish it, then the defendant has to pay double the amount, which was claimed. A double
fine is also prescribed for him who advances a false claim against another person.  

5.8. Rejoinder:
So far the time for replying is concerned Yāj. indicates that in case of felony, theft, defamation, assault, injury to a cow, the commission of a sin, and the accusations against a woman of (unchastity or absconding), the judges must instantly call upon the defendant to refute the charge. But in the other cases, the time of answering depends upon the parties and the judges. 

5.9 How to loose the suit:
We find under what circumstances a person will loose his case. Yāj. states: 

(1) He, who goes from one country to another county; 
(2) Who licks the corner of his mouth; 
(3) Whose forehead perspires; 
(4) Whose face becomes discoloured; 
(5) Whose mouth is dried up; 
(6) Who talks much by stumbling speeches and incoherently; 
(7) Whose words and looks do not please others; 
(8) Who bites his lips; 
(9) Who restores to a grandiloquent speech; 
(10) Who absconds or files away when any charge is brought against him; 
(11) Who does not speak anything when summoned by the court; and 
(12) Who comes by disfigurement in word, deed, body and mind, is described as a 

wicked person. Both in the matter of complaint and evidence they will loose the case.
5.10 Some guide lines:

Yaj. has given some guide lines regarding the basic system of justice, such as:

(a) When there is a conflict between two legal codes such as *smṛti* and equity then the equity (*Nyāya*) should supersede the law (*smṛtyovirodhe nyāyasttu, valavān*). But in the conflict between *Arthaśāstra* and *Dharmaśāstra*, the next will be powerful (*Arthaśāstraṭṭu balavaddhramaśāstramitiṣṭhitih*).\(^{12}\)

(b) There were four recommended method to establish claim by Yāj.\(^{13}\)
   i) Written documents,
   ii) Possession (lawful),
   iii) Witness, and
   iv) Ordeals or the divine test (in absence of the above).

(c) In case of monetary transactions where the facts of the cases for both the parties have been proved, the defendant must be made to gain. *Mitākṣarā* explains that when the plaintiff says 'A' has borrowed rupee one from me. In reply the defendant A says that yes I borrowed the amount but I have paid it back.' In such cases where statements of both parties are proved the defendant must gain the case.

But in some cases when a partial payment has been paid and the plaintiff claims for the full payment, e.g. 'A' has borrowed ten gold coins, five silver coins etc. but he repays only 10 gold coins. In this case if the plaintiff is able to prove that he did not repay the whole amount of coins the court will decide to pay the whole amount as claimed by the plaint.\(^{14}\)

(d) Regarding the ownership of the movable and immovable properly Yāj. has provided the rules like Manu. He says that,\(^{15}\)

> पञ्चयतोः\u0928\u094d\u0928\u094d\u092b भूमेहानिनिविशेषति वार्षिकी।
> परेण भूम्यमानाय धनस्य दशवार्षिकी। ॥ २॥२४

260
A person seeing that his immovable property is being enjoy for twenty years by other person but did not take any legal action/steps to recover it, he will loose the right of the property. In case of movable property this time limit shall be ten years. The following property and the right of the ownership over it are not however lost under any circumstance:

(1) The mortgaged property (ādhi);
(2) The boundaries (sīmā);
(3) The pledges (upanikṣepa);
(4) The properties of invalid persons and minors;
(5) The article of a sealed box, kept in trust without mentioning its contents (upanidhi);
(6) Government land revenue (Rājasva);
(7) Properties of women (strīdhana);
(8) Wealth of the Śrotṛya Brāhmaṇa.

The king should return these properties to the rightful owner taking it form those who misappropriate these. And he also should punish the persons

(e) There are some rules regarding the property whose owner is lost. The king is the custodian of such property. He should find out the rightful owner of that property and return it to him. He should examine the claim properly with the distinctive marks. If there is any false claim it should be punished by the equal value of the item. 16 When the king finds hidden treasure he should donate half of it to the twice-born (dvijah), but if a learned Brāhmaṇa finds it, he may keep the whole for his lordship is on everything. If any other person finds it the king should give him one-sixth part of it and should keep the rest. If he does not inform it to the king, he will confiscate all the troves. These rules are almost the same as the rules of Manu. The king should also pay back the wealth robbed from his subjects, otherwise he will incur sin. 17
5.11 Type of courts:
There are at least four types of courts or administrative units in to YS these are:

i) Administrator appointed by the king (Nṛpeṇādhikṛtaḥ);

ii) In legal procedure for men (unions or corporations of citizens or villagers). (pugāḥ);

iii) Corporate bodies (śreṇī);

iv) Friends and relatives (kulāṇi).

According the former court is the senior to court to the next. One cannot object to the order of the senior court but the senior court can review the decision of the junior court. Also there are exceptions to these provisions. The king can reverse the judgments delivered by any of these courts as the supreme authority of the judicial system. Specially for those judgements, delivered through fear or force, those instituted by women, conducted in the night, in close doors. Outside the village and those decided by enemies. Yāj. ruled out the validity of cases that have been instituted by a drunkard, on insane person, a diseased person, one addicted to gambling, a minor, one under the influence of fear, etc. and one instituted by a person having no personal connection with the suit.

5.12 The modes of punishment:  
The modes and the types of punishments of Yāj. are also very similar to those of Manu. He speaks four types of punishments for punishing culprits. He says that,

*घिन्तुंड्वस्त्वथा वाम्भं धन्तुंड्वं वधस्तः॥
*योज्या व्यस्ताः सच्छता वा ज्ञापाययहदिबेः॥ १३५७॥

i.e. gentle admonition, harsh reproof, monetary fine, and corporal (capital) punishments these are the four modes of punishment for a culprit. He also admonishes the king that before inflecting any type of punishment he should
keenly observe the case matter. He should consider the nature of crime, the
country or place, the time strength of the offender, age, deed and wealth.
Considering these factors he should inflict the punishment to any individual.
He says that,

\[ \text{ज्ञातवास्पराधः देशं च कालं बृहमथापि वा।} \]
\[ \text{वयं कर्मं च विन्तं च दण्डं दण्डेशु पातिते॥ १३६॥} \]
The forms of physical punishment are also similar to those stated by Manu. But
he differs regarding the amount of three fixed scales of monetary punishments.
He states that,

\[ \text{सामीतिः पणसाहस्यं दण्डं उत्तमसाहसः।} \]
\[ \text{तदर्थं मध्यमः प्रोक्तस्तद्वर्मव्यः स्मृतः॥ १३६॥} \]

\[ a\) Uttama sāhaśa daṇḍa or highest form of monetary punishment \]
\[ \text{comprises of 80,000 paṇas.} \]
\[ b\) Madhyam sāhaśa daṇḍa or middle form of monetary punishment \]
\[ \text{comprises of 40,000 paṇas.} \]
\[ c\) Adharma or pūrva or prathama sāhaša daṇḍa or the lowest form of \]
\[ \text{monetary punishment comprises of 20,000 paṇas. He also prescribes \}
\[ \text{the fine of one paṇa onwards for various types of crimes.} \]
Let us discuss the individual lawsuits as stated by Yaj. The first title is recovery of debts.

5.1.1. Recovery of debt (Ṛpādānam):

We find two types debts in the YS viz., (i) debts with pledges and (2) debts without pledges. Rules are different for the individual cases. In case of a debts with pledges the interest rate is less than that of without pledges. We get a clear picture regarding the procedure how to take a debt in the lekhya prakarṇam.  

What would be the terms and conditions for a debt, the name, place, time, witness. Everything should come in a written document. These details are not found in the MS. But YS is quite elaborate in this respect. First we shall discuss the rules regarding the debts with pledges. These are:

a) When a debt is preceded by pledges the interest should be one-eightheenth part of the principal amount per month.  

b) A debt with pledges is declared to be void when the principal amount becomes double and it is not realized. It would also be lost when the time of redemption is fixed and not realized within that stipulated time. But when the fruit is enjoyed by the creditor such as land, it is never forfeitable  

c) When the creditor enjoys a scaled pledge, he shall not get interest. He has to repay the loss made by the use. But in case of loss made by the king or by accident the creditor is not liable to repay.  

d) When a debtor, knowing the creditor as a good person and mortgaged the valuable articles by taking a far lesser amount of money than its proper value, the pledge is not forfeitable. Even the debtor can realize his interest.  

e) The creditor shall return the pledges when the debtor will come with the capital with interest. If he declines to return the mortgaged item he shall be punished like a thief. In case of his (creditor's) absence the debtor should
deposit the money to his reliable agent and could bring the mortgaged article. 25

f) When the debtor wishes to liquidate his debt by selling the mortgaged articles but the creditor is not available. Then the value of the article should be determined and it must remain in possession of the creditor. But no further accumulation of the interest from that time will be allowed. But when the debtor is absent and the amount becomes double with interest, the creditor is allowed to sell the article before a proper witness. Who could attest to the amount received by the creditor from the sale of the article. 26

These are the rules for the debt pledges now the rules for debt without pledges:

a) The interest of debt without pledges will be as per the caste. The Brāhmaṇas will give 2 %, Kṣatriyas 3 %, Vaiśyas 4 %, and the Śudras 5 %. Manu and Vasiṣṭha also recommend this much interest. 27

b) The person who will go to a deary forest (kāṇīrā) for trade shall pay 10 % interest.

c) The person who will go to the Sea shall pay 20 % interest. 28

d) There are provisions for lending living animals (cow) and some other raw materials. Yāj has fixed up maximum amount of interests in these cases. He says that, when someone borrowed a female animal for a long time the interest shall be one of its offspring. In case debt like liquid substances such as clarified butter, oil etc. interest must not exceed eight times of the principal things. And the interest for cloth, corn and gold should be four three and two times of the value of the principal amount respectively. 29

e) When a loan is given without any mortgage and the capital with the interest there on doubles itself and the debtor mortgages to creditor any land under cultivation, the former can release the property when his debt is paid off from the produces there of. If there is no such contract between the parties as, "if there is greater produce, the creditor is to reap the benefit, and if less,
he is to suffer loss". Then the mortgaged property will be released when doubled the amount is released from the produce and not otherwise.\textsuperscript{30}

So far as the rules for recovery of debts are concerned Yāj. says,

a) A debt should be paid according to the contract. When debtor offered the debt with interest to the creditor but he does not receive it for the multiplication of his own money. Then the debtor should deposit the money with an umpire, and the interest shall be ceased from that date.\textsuperscript{31}

b) The court shall help to recover the debt. Yāj. recommends all possible ways to recover debts. A creditor himself could apply any modes to recover his debt. If the debtor advanced a complaint to the court regarding the pressure of the creditor, the court may take action against the debtor. The court should compel him (the debtor) for the repayment of debt and fine as per his capability.\textsuperscript{32}

c) When a number of creditors of same caste sued a debtor for debts the king should clear up the cases according to the date of receipt of the debt. But when the creditors belongs to different castes he should follow the order of the varṇa.\textsuperscript{33}

d) The court shall get 10 \% levy from the debtor as a fine, and creditor will give 5 \% of the case money as a satisfaction of his repayment.\textsuperscript{34}

e) If a debtor is unable to pay debt he shall repay it by physical labour or in installments as prescribed by Manu.\textsuperscript{35}

The question who will inherit the debt i.e. in the absence or death of the debtor who will repay the debt is dealt with as follows:

a) The person who inherits the property liable to repay the debts, such as the wife (yoṣitgrāha) or relations of the person as the case may be.\textsuperscript{36}
b) He also particularized some cases that when the head of a joint family loaned for maintaining the family members, the heir of that family are liable to pay the debt in case of his death or departure to a foreign country.  

c) In some cases he prohibits the heirs to pay the debts. He says that wife is not liable to repay the debt of her husband and sons. A father is not bound to repay the debt contracted by his son or his wife, except when it is made for the maintenance of the family.  

d) A son must not pay the debt, even through hereditary, if it is contracted for the purpose of drinking wines, lust or gambling or if it is the residue of a fine or duty unrequited or anything idly promised.  

e) The persons who live on the earnings of their wives they will pay the debts contracted by their wives, such as, milkman, vintners, actors, washer men and hunters are such type of men who depends on the earnings of their wives, so these people must pay the debt of their wives.  

f) He also abated the liabilities of women for debt. He says that a woman should only repay the debts, which she has promised to repay, that which she has contracted along with her husband, or what she has done herself. She shall not pay any other debts.  

g) When the debtor is being absent from a long period or he is dead or suffering from an incurable disease his son or grand son should pay the debt.  

5.1.1(1) Surety:  
In this chapter Yāj. provides the rules for surety, which is an important element of judicial proceeding. Surety is a legal term that means a person who makes himself responsible for another, specifically in law, one who makes himself liable for another's debts, defaults of obligations etc.
We come across three types of surety in the YS viz., a) Surety for appearance (darśana), (b) Surety for trust (pratibha) and (c) Surety for payment (dāna). Sureties are in the first two cases to be held responsible in the event of default. They are liable to pay the debt in their lifetime, it shall not extend to his son. But in case of a surety for dāna or payment, when the person dies the liabilities lies on his heirs. So the dāna pratibha is hereditary but others are not. When there are one more sureties they shall pay the debt proportionately or as they were promised.

Yāj. tried to mitigate the pain or harassment of a surety. He says that when a surety has paid the debt to the creditor publicly, but the debtor shall be forced to pay double the sum of the surety. If it is paid by raw materials or living animals he has to pay the surety for a female beast with a progeny, for the corn three times, for cloth four times, for liquid substances eight times of the principal amount. He also prohibits a person to be a surety who belongs to a joint family and who is sharing his property with his co-sharer.

5.1.2. The law of deposit (Apanidhi prakaraṇam):
We know there are thirteen types of deposits in Smṛtis. Yāj. discussed only upanidhi and also mentioned that the other such yaicitam, tadanvāhitam, nyāsa and nikṣeṣa etc. should be followed by these rules.

When an article contained in a box, is delivered into the hand of another without being described it is called upanidhi or sealed deposit. It should be returned in the very condition in which it was entrusted. He also mentioned three different cases when the deposit is not to be refunded by the depositary:

a) When it is carried away by the king;
b) When it is stolen by the thief; and
c) When it is lost by a sudden accident.
But if it was asked before the loss and not returned later on the mishap happened, the depository is bound to make good the value of the article. He is also liable to pay same amount, as a fine. Sealed deposit is not usable by the depository. If he willfully converts it to his personal use, he must pay a monthly interest of five percent, if he uses it for trading purpose, he must return it with additional profit made by its use.\textsuperscript{45}

Next we observed three important rudiments of judicial proceedings viz., the witnesses; written documents; and ordeals or divine test. Let us discuss these one by one.

5.1.2(1) The witnesses:

This is the most important element of a judicial proceeding. A judgement can't come out without the examination of the witnesses. Yāj. was in favour of minimum three witnesses. He says that "tryavarāḥ sākṣina jñeyāḥ" i.e. a plaintiff must produce minimum three witnesses before the court to prove his claim. They should belong to the same varṇa or caste. When such witnesses are not available then from other castes.\textsuperscript{46} In the verse 2.68 he mentioned the persons who were eligible or competent as witnesses before the court. He states that,

\begin{quote}
तपसिनो दानशीत्या: कुलीना: स्मर्तयादिन: \\
धर्मप्रधाना ऊजव: पुत्रवन्तो धनान्विता: ||
\end{quote}

i.e., a) Persons devoted to religions austerities, b) Charitable persons, c) Persons who are born in a respectable family, d) Persons who are truthful, e) Persons devoted to religions observances, f) Persons who are innocent (akuṭilāḥ), g) Persons who possess sons, and h) Persons who are wealthy.
The persons who have the above qualities is admissible before the court as witnesses. He also provides a list of those who are not competent for delivering testimony. They are:

a) The woman;
b) An old man;
c) An infant;
d) A drunkard;
e) A gambler;
f) A mad man;
g) A person possessed by an evil spirit;
h) An actor;
i) A heretic (pākhaṇḍa);
j) A forgerer;
k) A disabled person;
l) A friend;
m) A person having some connection with the subject matter of the suit;
n) A person who is helping in the cases;
o) The enemy of the parties;
p) The thieves;
q) The robber. (ferocious person);
r) The vicious person;
s) A person forsaken by friends.

In another verse (which is not found in the Bombay edition) there are three persons who are not admissible before the court for testimony. They are: 48

a) Elderly Śrotriyās (learned Vedic Brāhmaṇa); b) Aged ascetics; and
c) Religion recluses.
Yāj. says that one virtuous person may be produced as a witness if both the parties approved of it. But in case of adultery, defamation, assault, theft and robbery any body such as woman, minor etc. are admissible for testimony. The witnesses were strictly prohibited for giving false testimony. Any type of perjury was severely punished by the court. Yāj. warned the witnesses about the eternal effect of the perjury. He says that, a person who is guilty of perjury shall be forced to the hell, which is reserved for the perpetrators of heinous crimes, as well as those for the incendiaries and the murderers of women and children. A person guilty of perjury will also lose all the merits of his own earned by previous hundred years. It will also be credited on his benefit that he falsely attempts to defeat.

The king should punish a person who knowing these eternal effects of perjury commits it. These are as below:

a) A witness who is guilty of perjury should be fined doubled the amount of fine prescribed for the defeated person;

b) In case of Brāhmaṇ, he should be banished from the realm.

c) Who declines to produce evidence after hearing the eternal effect of the perjury is considered to be a guilty of perjury and compelled to make a fine of eight times that of the defeated persons, for Brāhmaṇas however banishment is prescribed.

d) In the case of recovery of debt a witness who is summoned for testimony, but did not appear in the court upto forty-six day of issuing summon, he is compel to the whole amount of debt with interest. The king will get 10% of realized money.

These are the punishment for perjury. We find some exception to these. When a true statement may cause the life of a person the witness is allowed to speak lie. And for producing this false statement he has to perform some minor religious rituals. In the other cases i.e., how to decide the case when statements are
varied, Yāj. does not differ from Manu. These are the rules regarding the witnesses described in the YS

5.1.2(2) Written documents (lekhyam):

Lekha’ is treated as a secondary proof of documents in legal matters. There are four types of proofs in YS viz., likhita, bhuktih, sākṣiṇa and divya. Among these four Yāj. gave a prime place to the written documents not only in the court matter but also for every day use.

The ancient lawgivers divided documents into two broad categories:

a) Rājakīya or royal and b) laukika or popular. Commenting on Yāj. (2.22) Vijñāneśvara says written documents divided into two categories viz., sāsana and ciraka. Sāsana is used for the gift of land etc. when king gives land to a Brāhmaṇa or deities as a gift. Such type of gift is given by scribing in a copper plate or paṭa (cloth or canvas) for the information of future rules. Yāj. says that whatever transaction is made by the parties in case of debts that must also be written. Because parties might forget the terms and conditions promised by themselves. So it should be clearly noted down. He provides an advanced format for written documents. A written document must have particular characteristics as below:

a) Year, mouth, fortnight (bright or black), day;

b) Name of the person, caste, gotra (family), name of the fellow student,

c) Father's name of the parties;

d) At the end it must be signed by the debtor mentioning father's name;

e) Witnesses should sign duly, mentioning their father's name;

f) Witnesses should be equal in number and quality from both sides, and

g) At last the writer of the deed should sign confessing that I have written these documents under the guidelines of the parties.

This format is being followed even in modern times.
A debt contracted by a written document is payable by three generations. But a creditor may enjoy the deposited article so long the debt is not paid off. But when the documents are kept in another country, illegally written, destroyed, becomes indistinct, lost, detached, burnt or torn one must have another written out. A written document must be written without fear or out of covetness. Yāj. says that when the debts are repaid to the creditor, it must be mentioned on the back side of the deed. And after the discharge of the debt, the deed should be destroyed. Another important thing is mentioned that when it is paid before the witnesses it must be repaid before them.

5.1.2(3) The ordeals (divya):

The ordeal or the divine test is the fourth mode of proofs prescribed by Yāj. the first three (i.e., written documents, possession a witnesses) are the modes known as human proof. But the ordeal is known as divine proof. When the human proofs are not available, recourse to ordeals can be taken and it is also used in the final stage of the case when the court decides to give its verdict to an accused on the basis of human proofs. But if the accused is not agreed to the human proofs and he wants to prove his innocence through divine tests. Then only ordeals can take place. We find five mode of divine test in the YS these are:

a) Tulā or ordeal of balance;
b) Agni or the ordeal of fire;
c) The ordeal of poison;
d) The ordeal of water; and
e) The ordeal of koṣa.

Yāj. says that king himself or his officer should administer the ordeals in the presence of learned Brāhmaṇas. Sunrise is the proper time for administering ordeals. He says that the person who wishes to advance for a divine test, should
fast from the previous day, and he has to take a bath with clothes before sunrise, then he is fit for giving test.

Yāj. also prescribes some prohibitions and specifies the ordeals for the individuals. He says, that *tulā*, the ordeal of balance is intended for woman, children, old man, blind and lame persons the *Brāhmaṇs* and the diseased person. Fire, water and poison (in the quantity of seven barley droops) is prescribed for *Śūdra*. But in any case the transaction less than a one thousand *panas* is not allowed for ordeals like fire, *tulā* or poison. He has also prescribed the procedure to administer ordeals.

5.1.3. **Law of Inheritance (dāyabhāga):**

Regarding the inheritance Yāj. has followed the system of Manu which is prescribed in *Manusmṛti* except some differences. These are:

1. He has recommended 12 types of sons who are accordingly the hairs of the paternal property. In the absence of the preceding one, the succeeding one is entitled to offer *piṇḍa* and inherit the property. Even if father desires the son begotten on a *Śūdrā* maidservant is entitled to a share of the property. (*YS* 131-137).

2. Not much attention was devoted in the *YS* to daughters. There were no differences between daughters and sons, both were under the power of their father and were mainly considered as the hair of the property.

3. In addition to sons and daughters wives were other members of the family over whom the pattle family extends his power. Yāj. says that,

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यदि कुष्यांतः समानस्वामः पत्नः कार्यं समांशिकः
न दत्तं खीरवं यासां भर्त्र व भ्रेष्ठेण वा || २ १०५ ||
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274
i.e. if father makes the allotments equal, his wives, to whom no strīdhana has been given by their husband or their father-in-law, must be given equal share like a son.

4. Mother's strīdhana should be divided only among the daughters in absence of daughters sons will inherit that property. (2.117).

5.1.4. Boundary disputes (sīmāvivāda):
It was one of the prominent head of disputes (lawsuits) in the ancient India. Yāj. is very brief if compared with Manu in this respect. He says that the sign of boundary marks should mitigate a boundary dispute. In case of a land dispute the persons who will point out the boundary marks are given in the YS. 66 These competent persons are:

A) All the neighbours; (b) Old men; and (c) The others, such as, cowherds; persons cultivating boundary lands, persons living on the forest produce.
These persons should point out the boundary point by following the lists of the articles. The articles are as follows: 67
a) Elevated grounds; b) Charcoals; c) Corn-husks; d) Huge trees; e) Water f)embankments; g) Ant-hills; h) Slopes; i) Bones; and j) Heaps of stone.

When these marks are not available the sāmantas (person of neighboring village) or of that in which the disputed ground is situated, should demarcate the boundary. They will be in an equal number being four, eight or ten wearing red garlands and red rudiments and carrying earth should settle the boundary lines. When the persons (noted above) are not available the king himself should determine the boundaries. He should give a punishment of madhyama sāhasa to those who tell lies regarding boundary. 68
The same rules shall be followed for the law in disputes relating to fruits-garden, warehouse, village tanks, pleasure garden, dwelling houses and the gutters.  

The persons should be punished by the king who will destroy the boundary marks by the lowest fine for violence, for encroaching beyond the boundaries of lands, the highest fine and for usurping lands fine should be the middle fine for violence.  

In this respect Yāj. gave a keen attention towards the public welfare. He says that one should not prohibit for producing an embankment as well as the supplies of abundant water because it costs less inconvenience and takes slight place in comparison to its benefit. But if a man without notifying the owner of field or king sets an embankment round his field he shall not get the benefit. The owner of the land will be benefited, in absence of him the king. Another important rule is observed here that the person who is promised to plough a plot of land but does not, he has to pay the crops, which was lost by him.  

5.1.5. Disputes between owner of the cattle and his servant (svāmipāla vivāda):

Ancient Indian civilization was mainly based on agricultural product and animal husbandry. So in this agriculture pre-dominant society this title of lawsuit was very common and important as well. The suit divided into two parts. i.e. (a) disputes between the landlords and the owners of the cattle, and (b) the disputes between the herdsmen and the owner of cattle. Yāj. keenly observed the problems and prescribed the rules. Manu imposed some additional duties to the owner of the land that they should fence their cultivated land for its protection. He says, that a space of one hundred Dhanus (400 cubits), between the two villages and the two fields; two hundred Dhanus around the country
town and four hundred Dhanus around the city shall remain uncultivated. This land should be used as a pastureland. 72 He laid down the punishment for destroying crops, he has also to make good the damages of the crops. But in some cases when the herdsmen are liable for the damage they should be compelled to pay the loss. 73 He prescribes the punishments:

a) When a she-buffalo destroys another crops its owners shall be fined 8 māṣās;

b) If it is done by a cow fine shall be four māṣās;

c) If it is done by a goat or lamb fine shall be two māṣās;

d) But in case of damage caused by camel or ass fine shall be that of she-buffalo.

But when the animals sit in the field after having eaten up the crops are to be punished with a double fine as above. Mitākṣarā extends that if the animals again start eating fine should be four folds. 74 But he did not impose any penalty when the damage is not intentional. He also exempted the cases of the following animals: a seed-bull, the animals discharged by their owner for religious purpose, beasts without herdsmen, and the beast distressed by the act of god or king. 75 The rules between the herdsmen and the owners are:

The keeper should return the cattle in the evening in the same conditions as he was entrusted in the morning. In between the time if there is any loss due to the negligence of the keeper, he has to pay the loss and has to pay a fine of 13\textsuperscript{1/2} panas. 76

These are the rules for svāmīpāla-vivāda in the YS

5.1.6 Sale without ownership (asvāmīvikraya):

This also seems to be a recurring problem in ancient India. A person selling the article without ownership is called asvāmīvikretā. He is treated as a thief and should be punished by law. Yāj. says that one should at once take possession of his own property from the purchaser that has been sold by one who was not its
owner. Under four circumstances a transaction of sale should be treated unfair these are:

a) When the transaction is taken place in a secret mode;
b) When the article is sold by reduced or an inadequate price;
c) When it is held at an unusual time (i.e., at night); and
d) When the seller occupied the article by a suspicious manner.

When a purchaser came to know that he has purchased a lost or stolen article, he should make to apprehend the seller. In case of inconvenience, owning to his death or going to an unknown country, the purchaser should himself make if over to the real owner. 78

The seller and the purchaser both of them are to be punished for this transaction. If the purchaser could prove that he has purchased the article in an open market in front of many witnesses. And he is able to point out the seller he should be exempted from punishment. The seller of the article will be punished by five times of the value of the property along with the sell price, which is due for the purchaser. A person who receives a stolen or lost article without giving prior information to the king, he shall be punished by 96 paṇas. 79

When the custom office or the watchman found some lost or stolen articles they should preserve it for its owner unto one-year. If there is no claim unto the stipulated time it will be forfeited to king's treasury. If there is a claim it should be properly judged, if it is right it should be given to its real owner. The owner should also pay a maintenance charge to the king. Such as:

For the stray animal four paṇas; if the animals are of singles hoops;
For the human beings five paṇas;
For the buffalo, camel, cow or animal of cloven-hooves two paṇas;
For goat and sheep one paṇa. 80

These are the rules relating sell without ownership.
5.1.7 Gifts and its acceptance (dattāpradānikam):
This is very small sub-chapter of YS Yāj. only in two verses recommends the gifts and its acceptance. He stresses that a person should maintain his family first, then he can make gift without causing detriment to the family property. Yāj. rejected the wife and son as gift by someone. He says one may give everything except his wife and son. He also restricted to give all property when the persons have sons and grandsons.

He shows strong values regarding the gifts that one should not give the gift to others what he has promised to another. One should not resume the gift if once delivered or promised. This is also the spirit of modern law. Another important point is that an acceptance must be made openly, particularly for the immovable property.

5.1.8 Rescission of purchase (kṛitānūśaya):
This is an important sub-chapter in YS. He is some how elaborate in this sub-chapter. Manu propounded the date of returning the article for a repented customer in between the ten days of its purchase. But delivered a list for the individual cases. He says when the purchaser repents on his purchase he can return the article within the date as below:  

For the seeds ten days; for the iron one day;  
For the beasts of burden five days; for the gems one week;  
For the female servants one month;  
For the milk-cows three days; for the man servant a fortnight.

One should return the article if he repents on his purchasing this commodity, otherwise there will be no valid claim after these days. He also prescribed punishment for the artists and the weavers who will appropriate the customer's
valuable product. He gave a list for the deterioration of metal or cloth or the increase of cloth after making clothes.
These are:  

a) 1. Gold is not reduced by fire;
    2. Silver loses two *palas* in the hundred;
    3. Tin and lead eight *palas* in the hundred;
    4. Copper five in a hundred;
    5. Iron ten *palas* in a hundred;

b) 1) In case of woolen and cotton yarns, the increase is ten *palas* in a hundred;
    2) Cloth of middling quality five *palas* in a hundred;
    3) Cloth of fine quality three *palas* in a hundred;

c) 1) A reduction of a 30\(^{th}\) part is allowed in embroidered clothes and cloths made of hair.
    2) There is neither an increase nor a decrease in the case of silken clothes or bark.

When the raw materials such as gold or silk textures are made over to an artisan for making ornaments or raiment, the latter, when made ready must be weighed under these regulations. If there be any increase or decrease, in the weight the artisan is to be punished.

5.1.9 Breach of Service contract (*abhhyupetyāśuśrūṣa*):
This chapter provides a clear idea about the service contract in the society at that age. Manu did not discuss this head separately he discussed this legal matter under the head of *samvid vyatikrama*. But Yāj. provides an extra sub-chapter for this subject. In this context he emphasized on two contract of service viz., a) contract between master and slaves, and b) contract between teachers and students. From these rules we come to know that slavery was a
very profitable trade at times. Slavery was a social system in which one person was the property of another. We know from the primitive society to the eighteenth century slavery that was a legal trade in India. In ancient India Śūdras were mainly used for this purpose. After a long way on its passing the British Government of India first prohibited the importation of slaves from foreign countries into the British territories (regulation X, 1811). And it was finally abolished in 1860 by the Indian penal code, which declared the equality of all men and provided punishment for buying or selling any person as a slave. Yāj. gives the following regulations on this law suit.

a) The king must release the persons who were enslaved by force and who sold by thief as a slave.

b) A slave, who has saved the life of his master, he deserves to be liberated.

c) One who has accepted slavery for being fed shall be released on payment of money spent by the master of him.

d) An ascetic, who has returned from the life of religious order, shall be slave to the king till his death.

e) Slavery was lawful when the slave was of an inferior class; not when he was of a higher class.

Then he prescribed the rules between students and the teachers. He says that an apprentice, even when he has finished his mechanical education (āyurvedādi śilpa sikṣā), should remain in his teacher’s house for the stipulated period as contracted previously. He will receive his maintenance from his teacher, and giving him the proceeds of his skilled labour.

5.1.10 Breach of established usage of a public body (Saṁvida vyatikramāḥ): This chapter indicates the social harmony and stability of the ancient Indian civilization. We find four types of administrative units in the administration of
Yāj. It is evident that these public bodies were guided by some regulations and whosoever transgressed these rules were punished severely. Yāj. says that the king should make a White House (dhavalgrha) in the city (capital). Then he should settle some Brāhmaṇa who were well versed in three Vedas. He should provide sufficient livelihood for them and should ask them to protect virtue. He (king) should place someone as a head of the guild who is conversant with Vedas, pure-minded and free from avarice. He will take care of public affairs. They should carefully uphold the customary law as well as usage established by king, if it is not inconsistent with the revealed law. 87

Yāj. says that one who embezzles the property of Gaṇa (a guild or a public body), and the one who violates their established usage, should be punished by confiscating all of his property and should be banished from the realm. He also says that the person who does not follow the command of the person who speaks in the interest of a public body should be compelled to pay the lowest fine. 88

The persons were highly honoured by the king who show their interest in public benefit. Yāj. says that the king should first finish the business of those who approach him for the interest of guild and send them away after having honoured with gift and marks of royal favour. This person who was gifted by the king, should make it over to the guild and if he himself does not give to the body, he must be punished with a fine of eleven times of its value. 89 The same rules should prevail in the case of śrenī (a company of traders and artisans), nigama (persons from various castes coming from different countries for trading) and pāśaṇḍī (heretics). 90

5.1.11 Non payment of wages (vetanadāna):
These are the rules for another service of contract between master and the employees viewed by Yāj. this is also an important head of law-suits discussed
by Manu. Yāj. is a bit ornate to Manu in this respect. We observed the rules
under what circumstances a labour will not be paid and when he will be
punished. He not only prescribed punishments, but also declared awards to
them for the encouragement and better work. The laws lay down by Yāj. are: ⁹¹
a) When a servant (bhṛtya) receiving wages, refuses to do the stipulated work,
    shall pay the double the amount to his master. But when he did not receive
    any wages shall be made to pay equal amount to the wages. He has to take
care of the implements of their work;

b) When the master without setting wages appoints some workers for his trade,
cattling and other agricultural forms, he has to pay the amount as wages,
that of one tenth of the profit of that business;

c) When the master gets inadequate profit due to the negligence or any other
fault of the servants, they shall be remunerated according to the pleasure of
the master. But when more than a fair return to the master is secured he
should give something over and above the stipulated wages;

d) If two persons can not jointly finish a work, wages should be paid to them
according to the extent of the work done. If they can finish it, the stipulated
wages must be paid;

e) An employee breaks the vessel without any accident or oppression of the
king, he shall be made to pay for it. By putting obstacles to carry the articles
for a bridal party, he must be made to pay double the amount of his own
wages;

f) When a servant gives up the work at the time of his departure but while
there is still time for engaging another servant he should be punished one
seventh part of his wages if he is on the way one fourth part and if on the
half way all of his wages should be forfeited. Similarly, if the master
dismissing a servant under these circumstance shall be punished.
5.1.12 Gambling and betting (dyūtasamāhvyā):
This sub-chapter consists of two types of ancient sports viz., sports with dice or other inanimate things and sports with animated things such as wrestlers etc. with a stake. This game had been condemned since the period of Rgveda but still it exists in the society. Manu treated gambling as an open theft. He wanted to free the realm from gambling owing to its bad consequences. Yāj. however, allowed gambling in a central place under state supervision. He allowed it because this game led to detect the thieves. He thought that deceitful persons were always around this game. So, it is easy to find out them from the gambling house. Yāj. also appoints a keeper of the house (sabhika), who will facilitate the game and collect revenue for the king. It is also observed that he appoints some judges and witnesses among the gamblers to find out the deceitful manner of playing. Though he prohibits gambler as a witness. The rules for gambling are:

a) The keeper of the gambling-house shall take from a gamblers five percent of revenue, when the stake is a hundred paṇas or onwards. In the other cases ten percent of revenue should be collected;

b) The keeper of the house must be truthful and patient. He will give the stipulated share to the king; he shall recover the wager and should pay it to the winner;

c) After having exacted his royalty, the king should make the losing party pay the winner his due in a place where the party consists of fraudulent gamesters and keepers; otherwise not;

d) The king should appoint some gamesters as judges and witness. The king should punish those who play fraudulently or with a motive to cheat. First, they should be branded on their forehead by the sign of the leg of dogs and then should be banished from the realm;
e) The game should be supervised by kings officer for detecting thieves. The same rules prevail for the game of samāhvaya (prize-fighting).

5.1.13 Defamation (Vākpārāsyam):

Vākpārāsyam is a word that etymologically indicates the false or unjustified injury to the good reputation of another as by slander or libel. Defamation assault, theft, robbery and adultery are the five titles out of eighteen titles directly deal with criminal intention. Even these five titles comprise most of the criminal offences of modern times. Manu propounded monetary and physical punishment in this regard. Sometimes physical punishment led to capital punishment. But Yāj. prescribes only monetary punishment except in the case when the king is defamed. When someone used abusive language to king, his tongue should be cut off. 93 Let us find out the punishments for these cases: 94

a) A person, who vilifies another by true, untrue, or ironical statements that he is a person of wanting limbs or an organ of sense and the diseased shall be fined half of thirteen paṇas

b) One who abusing another that, "I have criminal connection with thy sister or thy mother" shall be punished by a fine of 25 paṇas by the king.

c) In case of such abusing caused in between the higher caste and inferior caste, the inferior caste will be fined double that of the higher caste. Double is also the penalty for abusing other's wives and persons of superior castes.

d) A double or triple punishment is mandatory when the lower caste man vilifies the man of a higher caste accordingly. At the same time fine would be reduced comparatively, when a higher cast man vilifies a lower caste.
e) One who uses words destructive of another's arms, neck, eyes or thigh fine should be 100 *pañas*. And half of the above fine (50 *pañas*) shall be imposed for abusing to the feet, nose, ears, the hands or the like.

f) An incapable person calumniating thus should be fined with a fine of ten *pañas*. But in case of a capable person on being punished should furnish a surety for the protection of the person (abused).

g) In case of abuse involving degradation from caste the fine is that for a middle fine for violence. But in the case of abuse involving an accusation of a secondary sin, one shall be punished with a fine of lowest fine for violence.

h) One who used abusive language to a learned Vedic person, a king or a deity shall be punished by the highest fine for violence, as well as the middle fine for violence shall be imposed for abusing to caste and corporate bodies; and the lowest for vilifying a village or country.

5.1.14 Assault (*Daṇḍapārusya*):

This is an important sub-chapter of criminal justice in ancient India. Yāj. admonishes the king to place his full attention while delivering the judgement of these cases. Normally witnesses are to prove the cases but when they are not available then how the cases would be determined. In this regard Yāj. provides three special methods to detect the criminals. He says, when the witnesses are not available the king should determine the cases by the marks of the injury; by the circumstantial inferences; and by the popular reports. 95

He also warns that there are chances to make the false marks so judges should be very cared to this. Assault means an unlawful physical attack upon another. But in the *YS* we find offences committing against property such as wall, animal
and trees are also discussed under this head. If we categorize the offences like assault we will get the divisions as below:

a) The offence committed against the higher caste by the lower caste person;
b) The offence committed against the same caste people;
c) The offence committed among the same caste;
d) The offence committed against animal and trees; and
e) Throwing something intending of physical harm to someone.

Let us see the punishments regarding assault in the YS these are.  

a) When one throws ashes, clay or dust to another person he shall be punished by ten paṇas. And 20 paṇas for throwing at him the fifth thing, the heel or the spittle. These much punishments are imposed when the offences are done between the person of the same caste and equal in rank. But the fine for the same offences is double, when it is committed towards the wife of other's or the person of a higher caste. In case of offences committed towards the person of a lower caste the fine shall be half of that. There shall be no punishment when a person who is out of mental derangement or is drunk commits the offences.

b) The person of other caste who inflicts pain to a Brāhmaṇa the limbs should be cut off by which he made pain. When any weapon is uplifted for the purpose, the penalty should be the lowest fine for violence; when it is merely touched the fine is half of the amount.
c) A fine of ten and twenty paṇas shall be imposed respectively when the hands or feet are raised up for striking a person of the same caste.
d) The middle fine for violence is laid down for all classes for mutual pointing of weapons.
e) Who, violently pulls the foot, the hair, the clothes or the hands of another shall pay the fine of ten _pañās_. But a fine of hundred _pañās_ shall be inflicted on a person for violently pulling another man, binding him with cloth and trampling him under foot.

f) One, who strikes another with a pieces of wood etc. without shedding blood fine is thirty two _pañās_; in case of blood shedding fine is double (64 _pañās_).

g) The middle fine for violence shall be imposed for breaking another’s hand feet or teeth; or for tearing the ears or the nose; or for laying open a sore and likewise for beating one till he is almost dead.

h) In the case of restraint in respect of motion, feeding or speaking; and of injury to the eye and the like and fracture of the neck, the arm or the thigh the fine shall be middle fine for violence.

i) When a group of persons assault a single person fine shall be double than that already mentioned. Whatever is taken away at the time of affray, must be returned to its owner. Who takes the article should be compelled to make a fine of double the value of the stolen article.

j) A person, who made an assault and injured someone bodily, shall be compelled to pay the expenses of cure as well as penalty laid down for individual cases.

k) Yāj. declared when an offence is not made intentionally it will not make any harm to the offender. He says that the driver shall not be liable for the offences committed by a four-footed animal if he cries out go away, go away; as well as a thrower of wood, a clod of earth, an arrow, a stone, a arm and horses when in pair.  

When any harm caused by a bullock owing to its nose-string; or by a carriage, the yoke of which has been broken; or a cart proceeding in an opposite direction, the owner shall not be held responsible.
The owner of the beast who does not save the person attacked by his ferocious animal, when he was able to do so, shall be punished by the lowest fine for violence. The fine would be double when the suffer cries out for his help.  

**Offences against property:**  
a) The person who strikes, perforates or demolishes a wall shall pay a fine respectively five, ten and twenty *paṇas*. Also he has to bear the expenses of reconstruction.  
b) One who throws into the house of another a thing likely to produce bodily injury should be made to pay sixteen *paṇas*. One similarly throwing a thing dangerous to life is fined by the middle fine for violence.

**Offences against animal:**  
a) The person, who is caused for giving pain, drawing blood, cutting off the limbs of a small animal the fine shall be from two *paṇas* onwards. But in case of cutting of their sexual organs and causing death, the middle fine for violence shall be imposed along with the value of the animals. The penalty should be double.

**Penalties for causing harm to the tree:**  
a) For causing injury to the branches or trunk of the trees or uprooting of trees which throw down branches. Or which are the means of lively hood, the fine is twenty *paṇas* and two fold of the preceding fine for the offence next in order.  
b) In case of injury to trees growing in a sacrificial place cemetery, a boundary, a sacred place or a temple and the trees which are well known, the fine is double.
c) Half of the penalties shall be inflicted (as above mentioned) for cutting
down groves, bushes, creepers, plants and medicinal herbs grown in the
places mentioned before.

5.1.15 Robbery (sāhasam):
This is another sub-chapter of the crime and punishment in ancient times. Yāj.
defines \(^{103}\) it as "sāmānya dravya prasabhaharanātsāhasam smṛtam" i.e.,
when a common as well as another property forcibly carried away that act is
called sāhasa or robbery. Commenting on verse (YS 2.72) Mitākṣara says that,
"manusyaṁ māraṇaṁ cauryaṁ paraḍārābhimaśaṁ ca pārṣyamubhayam ceti
sāhasaṁ syāccaturvidhamiṁ" i.e., sāhasa is of four kinds, a) homicide, b) theft,
c)adultery, and d)defamation and assault. These titles are already discussed by
the Smṛtiśāstra individually for its distinct nature and importance. Sāhasa
usually indicates the offences of robbery and violence. So, under this head we
observe that there are some rules for robbery and some similar offences that are
treated as the transgression of rules, which show effects on our social life. Let
us find out the regulations that are prescribed for the robbery and violence.
These are:\(^{104}\)

a) A person found guilty for violence or robbery should be fined double the
value of the article he robbed. But the penalty is four fold when the offence
is denied by him.

b) The person who instigates to accomplish the offence like sāhasa shall be
made to pay double fine; but who declared reward for achieving such a
heinous offence shall be punished four times of the fine.

c) He has initiated invariable laws for some offence, i.e., a fine of fifty paṇas is
fixed for the offences mentioned below:

i) Who disobeys and abuses the venerable persons;

ii) Who beats his brother's wife;

iii) Who does not give what he is promised;

290
iv) Who opens the goods of a sealed house, without the owner's permission and
v) Who injures his neighbouring landholder, persons born in the same family or his own village.
d) A penalty of hundred paṇas is fixed for the offence of violence are as below:
i) He, who wantonly consorts with a widow, i.e., who is not officially sanctioned for intercourse with a widow woman;
ii) Who does not exert to help a person seeking his protection from fear of thieves;
iii) Who cries without cause;
iv) Who feeds a Sādra ascetic or a digambara on the religious or obsequies occasions;
v) Who pronounces an improper oath;
vi) Who being disqualified person, performs as a qualified;
vii) Who destroyed the generative organ of a bull or of small animals;
viii) Who misappropriates a public property;
ix) Who destroy the embryo of a female servant; and
x) Who without justification renounces his father, mother, son, sister, brother, husband, wife, preceptor or a disciple.

Then we find the punishment for some similar offences those are treated as sāhasa or heinous offences. These are: 105

a) A washerman should be fined three paṇas for wearing the cloth of another which is brought for washing. A fine of ten paṇas should be inflected when he used it for selling, hiring, mortgaging or giving to another's use.
b) A fine of three panas is a penalty for persons giving evidence in quarrels between a father and son. But who engages himself into that quarrels should be punished eight-times of those (24 panas).

c) Who issues false balances, false royal mandates, false measures and coin shall be liable to the highest fine for violence.

d) The examiner of the coin and articles, who stamped with impression, pronounces a genuine coin false and a false one genuine shall be made to pay highest fine.

e) A quack without knowing the art of treatment treats the lower animal or ordinary people or the officer of the king shall be amerced in the lowest, middling and highest fine for violence respectively.

f) He who binds a person not deserving to be bound or who releases one fettered by the king before the final disposal of the cases, should be punished with the highest form of fine for violence.

g) The person who pilfers by a trick one eighth part of grains etc. while weighing by a standard measure or in a scale should be made to pay two hundred panas as fine. A proportionately higher or lower fine should be imposed in case of pilfering the amount.

h) For adulterating medicinal drugs, oily substances, salt scented rice treacle etc. a fine of sixteen panas shall be imposed.

i) One making a spurious imitation of earth, leather, threads, iron, bark or cloth should be punished with a fine of eight-times of the value of the commodity to be sold.

j) He who pledges or sells a sealed casket in the case of fraudulent transaction he should be fined as:

For selling the article value less than one pana, fine is fifty panas;

When the value of article is one pana, fine shall be 100 panas;

When the value of article is two panas fine shall be 200 panas;
When the value of the article is more than these the fine shall be increased respectively.

We find that some violations of rules by the traders regarding sale and purchase are also taken care of under this head. Yāj. views 106 that the king should fix up the selling rates of the commodities considering the benefit of the parties. He propounded five percent profit for the commodities of the domestic products (goods) and ten percent for the foreign goods. When the sale and purchase take place immediately.

Law shall punish those who will transgress these rules. The highest form of pecuniary punishment is laid down for those merchants, who in a body obstruct the sale of foreign article. And for increasing the sale rate as above.

5.1.16 Non-delivery of articles sold (vikrayā sampradānam):

This is less important sub-head in he YS Manu did not give extra-space for this title. In fact these rules could be included under the head of recession of sale and purchase. We did not find any definition for this in the YS. 107 Yāj. only prescribes the penalties under such condition when the sellers and the purchasers are denied for a lawful transaction of purchase. Let us look into the penalties prescribed for these offences: 108

a) A seller who having received the price of the commodity does not make it over to the buyer as demand shall pay the money back with interest or profit as desired by the buyer. When the buyer is a foreigner the seller shall be made to pay the profit that might have been made in that country.

b) When the buyer is unwilling to receive the article it can be resold. In between if any loss made by the negligence of the buyer, the seller is not
liable for that. But when the buyer asked the seller for delivering the article and afterwards it is lost by an accident or by king the seller is liable to pay the loss.

c) A seller is bound to pay double the value of the article when he resells the article, which was previously sold to another person. And when he sells a blemished article as non-blemished one.

d) Having purchased commodities of trade, not knowing their exact value, a trader should not repent, if he does, he makes himself liable to pay a penalty of one sixth of the value of the article.

e) These are the rules for violations in purchase and sale in the YS in fact most of the rules have already been discussed under the head of robbery as similar offences.

5.1.17 Laws relating Joint-stock Companies or a number of persons carrying on a trade (Sambhāya-samuthānām):

It is another small sub-chapter regarding the rules for co-partnership transaction. The legal term means undertaking in which are joined together (labour, capital or both). Manu and Yāj. did not mention the person with whom a partnership can be taken up. They just have stated the shares of profit among the partners, the king's duty and the respective role of the co-partners. Manu limits his rules to the priest and the instigator of a sacrifice. He also talks about the fees among the partners. But at the age of Yāj. there might not be more complicated sacrifices so the distribution of fees is not found in the YS. He paid an attention to the partnership of traders and artisans. Other Smritis defined the qualities of a co-partner.

"Br. (SEB vol. 33. P. 336 verse-1-2) says, that a man should carry on a joint business with other persons of good family, that are clever, active, intelligent (or educated), familiar with coins, skilled in controlling expenditure and
income, honest and valiant (or enterprising) and that joint undertakings like trade should not be carried on by prudent men with persons (partners) who are weak or lazy or afflicted with disease or are unlucky or destitute of money." 109 Yāj. was in favour of a fair distribution of profit and loss. He says that, 110 members of a joint venture should share their profit and loss according to the capital put in by each or by contract. The partners should maintain a good relation among themselves and everybody should try to promote their business. A partner is responsible to make good what has been lost through his negligence. As well as an additional share of one tenth of the profit should reward who protect the property at the time of imminent danger. The king will settle the selling price of the commodities and on that basis he will collect 20 per cent of tax from the traders.

Then we find some penalties prescribed for transgression of some rulers. These are: 111

a) He shall be made a fine of eight times the value of the commodity, who falsely declares the quality of the articles of sale; who withdraws himself from the place of collecting a tax; and who purchases and sells fraudulently.

b) A fine of ten paṇas shall punish a marine officer who is engaged in collection of river customs duty, collects the same on articles carried on land. Same penalties are levied for him who renouncing a neighbouring Brāhmaṇa, invites another.

When a co-partner of a trader dies abroad his property should be given to his heirs or friends (bāndhavas) or the kinsmen, if there are no heirs the share will be forfeited by the king. Yāj. also says that a crooked partner should be expelled from the team without profit. And a partner who is not able to do his duty he can appoint another man to act for him. In this manner other transaction should be taken care of viz., sacrifices, agricultural work and the work of artisans. 112
5.1.18 Theft (Steyam):

Theft is one of the most important heads among the prominent five titles of criminal justice. It seems that this has been a very common offence of all times. Like other lawgivers Yāj. also prescribes various types of severe punishments for theft. In YS we get at least three types of penalties for theft, viz., a) death by various cruel ways, b) banishment with branding on forehead for the Brāhmaṇa and c) monetary punishments of three kinds. Yāj. did not define the offence of theft. But he defines sāhasa as an act of forcibly carrying away one's property by another. In the explanation of verse 2.72 of YS Mitāksara includes theft as an act of same nature of offence. He also discussed some offences of theft as similar offences under the head sāhasa. Yāj. categorizes theft according to the nature and value of the article. He says that, kṣudramadhyamahā dravyaharane sārato damah (2.275), i.e. in the case of theft of inferior, middling and superior articles. The fine shall be as per the value of stolen articles. But he did not mention the name of the article. Mitāksara quoted it from Nārada-Smṛti, which has been discussed in the head theft prescribed by Manu in detail.

In the first three verses of this sub-chapter (2.266-268), he has discussed the procedure how to find out a thief when a when theft is committed nearby. He suggests some marks, which could identify a person as a thief.

- The person who possessed stolen article.
- Who belongs a special mark of a thief in him.
- Who had been previously convicted of theft.
- Vagabonds whose whereabouts are not known.

A police officer can arrest them for this suspicious identity. He may also arrest the persons mentioned below:

- Those who concealed their caste and name;
- Those who are addicted to gambling, women and drinking wine;
- Whose mouth dries up and voice fatter on being questioned;
- Who inquire another's property and house without any apparent cause;
- Those who secretly move about;
- Those who are lavish in their expenditure considering source of income; and
- Those who sell broken (vinaṣṭa) article.

A person who has been arrested on these suspicious charge of theft, has to prove his innocence by any means, otherwise he shall be compelled to return the stolen article as well as fine to the king.¹¹⁴

Yāj. mentioned that the king has the whole responsibility of his subjects. He should take care of their property by his administration. He should restore the stolen property from the thief and return it to them. In these regard Yāj. shifted liabilities to some of the king's administrative heads. Under whose jurisdiction the offences of culpable homicide and theft committed. He says that the offences committed in the door of the village master the head of the village is responsible to identify the thief or he is liable to compensate the article. When it is committed on a pasturage, the blame lies on the master of the pasturage if on a road or on lands other than a pasturage the guard there of is responsible. When it is committed on a boundary of a village, the head man of the village (grāmamukhya) is liable; if it is found that foot prints of a thief entered into another village the head of that village is responsible. When it is committed in the distance of two miles from the village or the midst of many villages the head of the five or ten villages will be liable for that theft.¹¹⁵ When there is nobody to take responsibilities for theft, the king should compensate the value of the property from his treasury.

Then he prescribed penalties for the offence of theft. He also advised the king that before passing the sentence he should consider the place, the time, the age and the ability of the offender. He says that desakālavayah śakti sajñintyam danda karmaṇi.¹¹⁶ He proclaimed that a person found guilty for theft should

297
be punished by different modes of corporal punishment. But in case of Brāhmaṇa the thief should be branded and banished from the realm. The punishments that is prescribed in the YS are:

a) The king should cause to be impelled on a stake, who snatches away a prisoner, who steals a horse and elephant and who kills another forcibly.

b) At the first offence of a cut-purser and a pick pocketed shall cause to be cut off their tongs (index finger and forefinger). But on the repetition of same offence a hand and a leg should be cut-off.

The king should punish a person who assists a thief. Yāj. views that the person who knowing someone to be a murderer or a thief supplies food, place, fire, water, counsel appurtenances, and (loans for) expenditure shall get the highest fine for violence. There are four verses in this sub-chapter. These are:

a) For striking another with a weapon or causing abortion the highest fine for violence, shall be imposed. In the case of the killing of a man or a woman, the fine shall be highest or lowest considering the circumstances and merit of the murderer and the victim.

b) A dissolute woman, who destroys an embryo herself or who kills a man or destroying a bridge, shall be plunged into water after being tied to a stone, if she is not pregnant.

c) A woman who poisons another or puts fire for destroying house or who kills her husband, spiritual guide or her children should be killed by an ox, after cutting her ears, hands, nose and lips.

d) Those who set fire to a field, a house, a forest, a village a pasture ground, a threshing floor; and those who carnally know the wives of the king should be burnt in a fire of grass (vīraṇa). These verses are really connected with the heinous offences.
Some methods for investigation or finding out of the offenders like murderers also mentioned here. He says that when an unknown person kills a person the investigating officer should immediately ask his (victim's) sons, friends and others regarding the murdered person. He will ask them if the murdered person had any quarrel with anybody; if other person had visited his wife or he has any connection with another woman. What sorts of livelihood he did seek for and with whom he had gone out. Persons, living near the place of murder should be gradually accosted on the subject.  

5.1.19 **Adultery** *(strīsaṃgrahaṇam)*:

Adultery is the last sub-chapter among the five heads of crime relating to heinous criminal offence. This title included any type of unlawful sexual offences i.e., rape, deceitful sexual intercourse and the sexual intercourse with passion. The lusts or unnatural sex are also discussed under this head. The word *saṃgrahaṇam* means the unlawful coming together of a man and a woman for sexual enjoyment. *Mitāśara* states that, *strīpuṃsayorbhīthunībhavaḥ saṃgrahaṇam*.  

Yāj. also defines adultery as an unlawful act. He states a man is said to commit adultery when he is found holding of the hair of another's wife, when there is a sign of excitement or a lustful embrace by either one's admission or by the admission of both. And one who touches the knot of upper or lower garments, the breast, the thighs and the hair of a woman; who holds an untimely tete-a-tete at an improper place with another's wife and who takes a seat in the same bed with her.  

At present adultery is not treated as such a heinous offence as it sitting on the same seat and even touching each other in a reasonable condition is allowable. Now adultery is treated as an act of unlawful sexual intercourse by mutual consent or connivance of the man, in this case the law only punishes man, woman is not to be treated as an abettor. But in the ancient times both were punished severely. Kat. (487) laid down the general rules that in all offences
women should be punished to half the fine in money that of the male. In case of death penalty for a male, the penalty for a female would be cutting of limbs \( \text{(Sarveśucāparādheśu puṁsoyorthadamaḥ smṛtaḥ! Tadardham yośito dadyurvdhe puṁso 'ngakartanam)}^{122} \) Though mutilation of limbs and death was a common punishment for woman. He propounds the penalties for the offences of adultery as below: \(^{123}\)

(a) When a woman forbidden to talk with others by her son and husbands does such a forbidden act should be field one hundred \( pāṇas \). In case of a man fine is two hundred \( pāṇas \). When both were forbidden to do such an act by their relative's punishment should be as per caste.

(b) When adultery is committed between the man and woman of same caste the fine shall be highest for violence. In case of adultery with a lower caste woman by a man of superior caste fine shall be middle fine for violence. In case of adultery with a woman of higher caste death should be the punishment. In this regard cutting off their nose and ears should punish women.

(c) Who, kidnaps a maiden of same caste who is going to be married shall be fined in the highest fine for violence, but same offence in case of ordinary cases fine shall be lowest fine for violence. Death must be a punishment in case of this offence towards a superior class. When the act has taken place with a willing maiden of lower caste it is not an offence at all.

(d) An unwilling maiden of other caste when defiles by hands and scratches by nails, the offender shall be punished by cutting-off both hands. Same offence in case of higher caste maiden, death shall be the only punishment.

(e) For uttering a true slander or defect of an unmarried woman fine shall be 100 \( pāṇas \), but for false accusation he shall pay two hundred \( pāṇas \). Who make sexual intercourse with beast shall pay a fine of one hundred \( pāṇas \).
For holding sexual intercourse with a woman of inferior caste and a cow fine shall be middle fine for violence.

(f) A penalty of fifty paṇas is laid down for them who have intercourse with an avaruddhā (protected female slave) and a bhujisyā (another's mistress), even when intercourse is permissible with these woman.

(g) For committing rape on a female servant who is prevented by her husband to visit another people fine should be ten paṇas. In case of group rape fine is 24 paṇas each.

(h) A prostitute who has received her wages, shall if unwilling, be made to pay twice as much. Similarly, if the man after payment of wages be unwilling, he shall forfeit his advance.

(i) A person who has made intercourse with a woman in an improper part of the body or made water or void excretion on her shall be fined 24 paṇas. Same fine is also for him who has connection with a female devotee.

(j) When a man has connection with as Antyā woman he should be branded with an obscene mark and be banished. If a Śūdra acts in such manner he is similarly liable to be branded. But if an Antyā man has connection with a Ārya woman he shall be put to death.

These are the penalties for adultery. In the third chapter of YS he prescribes penance for sinful or immoral acts. He mentions three types of sinful act viz., Mahāpātaka, upapātaka and atipātaka. Who violates the preceptor's bed is condemned to be a sinful man or mahāpātakin. Death is the only punishment for this great sin. In the verse 3.231-233 of YS he mentions some immoral works that are treated as a great sinful and great-great sinful works the person who makes illicit sexual intercourse with friends wives, respectable maiden, his own sister, lowest caste females, females of the some family, and wife of his son, these acts are equivalent to violating the bed of ones own religious preceptor. Also who has illicit intercourse with the sister of his father, the sister of his mother, maternal aunt, stepmother, the daughter of his family priest;
preceptor's wife, his won daughter is also to be treated as gurutalpaga. Cutting off the generative organs should kill these persons. When these women are willing an urge the person for illicit intercourse they should also be killed in the same way.

5.1.20 Miscellaneous (Prakīrṇakaṃ):
The last sub-chapter of the civil judicature deals with various crimes in 13 verses. The offences that are difficult to define under any sub-heads mentioned elaborately above are discussed under this head. We feel some of the verses could be included under the previous sub-heads, but there are some verses that cannot be classified in any other sub-head of YS and they rightly are taken care of here. These are:

a) A person who adds or omits anything writing to the king's edicts or he who helps an adulterer or a thief to escape shall be punished by highest fine for violence.

b) Who, falsely defiles a Brāhmaṇa, Kṣatriya, Vaiśya or a Śūdra by feeding them with forbidden food which is not to be eaten, shall be respectively fined highest, middle, lowest and half of the lowest fine for violence.

c) Who, sales gold as pure and who sales forbidden meat (dog etc.), should have their limbs severed and compelled to pay the fine of highest fine for violence.

d) One, who calls a paramour as a thief for hiding the shame of his family, shall have to pay a fine of 500 paṇas. But who receives gratuity from the adulterer and lets him go, the fine shall be eight times of that illegal gratification.

e) Who sells the article lying on the dead body, who strikes his preceptor or who sits on a royal car and throne, shall pay the highest fine for violence.
f) Who pierces both the eyes of another persons, who issue proclamation hostile to the king or a Sūdra falsely obtains the marks of a Brāhmaṇ shall pay a fine of 800 paṇas.

Another important provision is noted here to ensure fair justice. We have already reported that king belong the supreme power in judiciary. So that he has the right to review any lawsuit, especially when there is notice of any unjust or biased judgment. In the case of review by the king if it is found that the judges were unfair and biased they will be fined double the amount that was realized from the defeated person.

But if the defeated party comes with an appeal that he was illegally defeated the court should take care of the case and after reviewing if it is found that the case was fairly judged the appellant shall be fined double the amount that was previously imposed.

The king is also not out of legal regulations. Yāj. states that if the king realize any illegal fine from the subjects he has to pay thirty times of that fine; that would be dedicated to the god Varuṇa and shall make it over to the Brāhmaṇ.

These are crimes and punishments as described in the YS we will give a comparative analysis in next chapter among these three lawgivers.
References

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3. YS P.184.
4. YS P.176.
5. YS PP.169-70.
7. YS 2.2-8.
8. YS 2.9-10.
9. YS 2.11.
10. YS 2.12.
11. YS 2.13-16.
12. YS 2.21.
13. YS 2.22.
14. YS 2.23.
15. YS 2.24-26.
16. YS 2.34.
17. YS 2.35-37.
18. YS 2.31-33.
19. YS 1.367, 1.367, 1.368.
20. YS 2.84-94.
21. YS 2.37.
22. YS 2.58.
23. YS 2.59.
24. YS 2.61.
25. YS 2.61.
26. YS 2.63-64.
27. YS 2.37.
28. YS 2.38.
29. YS 2.39.
30. YS 2.64.
31. YS 2.44.
32. YS 2.40.
33. YS 2.41.
34. YS 2.42.
35. YS 2.43.
36. YS 2.50-51.
37. YS 2.45.
38. YS 2.46.
39. YS 2.47.
40. YS 2.48.
41. YS 2.49.
42. YS 2.50.
43. *YS* 2.52-57.
46. *YS* 2.69.
47. *YS* 2.70-71.
49. *YS* 2.72.
50. *YS* 2.73-74.
51. *YS* 2.75.
52. *YS* 2.81.
53. *YS* 2.82.
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56. Suparkar, 1990, pp.120.
57. *YS* 2.1. 318, 319.
59. *YS* 2.90.
60. *YS* 2.91.
61. *YS* 2.89, 93, 94.
62. *YS* 2.95, 96.
63. *YS* 2.97.
64. *YS* 2.98.
66. *YS* 2.150.
67. *YS* 2.151.
68. *YS* 2.152, 153.
69. *YS* 2.154.
70. *YS* 2.155.
71. *YS* 2.156, 157, 158.
72. *YS* 2.167.
73. *YS* 2.161.
74. *YS* 2.159, 160.
75. *YS* 2.162, 163.
76. *YS* 2.164, 165.
77. *YS* 2.168.
78. *YS* 2.169.
79. *YS* 2.170-172.
81. *YS* 2.175, 176.
82. *YS* 2.177.
85. *YS* 2.182, 183.
86. *YS* 2.184.
87. *YS* 2.185, 186, 191.
88. *YS* 2.187, 188.
89. *YS* 2.189, 190.
90. *YS* 2.191-192.
92. *YS* 2.199-203.
93. *YS* 2.302.
94. *YS* 2.204-211 (Assault).
95. *YS* 2.212.
96. *YS* 2.213-220.
97. *YS* 2.298.
98. *YS* 2.299.
100. *YS* 2.223-224.
102. *YS* 2.227-229 (Rubbery).
103. *YS* 2.230.
108. *YS* 2.254-258.
111. *YS* 2.262-263.
112. *YS* 2.264-265 (Theft).
113. *YS* 2.275.
114. *YS* 2.269.
117. *YS* 2.270.
121. *YS* 2.283, 284.