Chapter Six

Conclusion
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6.0 Introduction:
In the foregoing chapters we have discussed the ancient Indian concepts of crime and punishment right from the Vedic period to the modern period. In this chapter let us take a survey of the whole discussion and try to look into the chronological growth of Indian legal system. Over all, this thesis might help readers and researchers to understand that the legal system of India at present has not come out in a day. This present form of judicial system has taken its shape through long period of hundreds of centuries in accordance with the needs of Indian society through ages. To begin our survey with the Vedic period, the Vedas are the prime sources of Indian traditional knowledge. In the Vedas we get the inking of conditions in which the foundation of Indian legal system laid down. The RV is the work, which deals with the knowledge of all branches of the universe. It is a fact that law grows as per the necessity of the society. It may be assumed that Āryans had a strong faith in Dharma, they also believed in the cosmic order which is mentioned as Rta in the Vedas. So the legal institutions like modern or post Vedic period are found in the Vedas. As per people's need it emerged afterwards day by day. If we go through the history of Indian legal system we get at least six major phases of its development. Such as; (a) The Pre-Buddhist or Vedic period; (b) The Buddhist and Jain period; (c) The Smṛti period; (d) The Medieval period; (e) The British-India period; and (f) The Independent Indian period or modern period.

The RV is the earliest literary monument of ancient India, which represents a legal and socio-political status at that time. The exact time frame of the Vedas are yet to be established. It is supposed that the Aryan tribes started to build up their society sometimes between 4500 B.C. and 1500 B.C. By any means the
time limit may not be below 500 B.C. The Vedas also comprise a vast literature, which was composed phase by phase. So, more information regarding judicial system is found in the AV, Brāhmaṇas and Dharmaśūtras in comparison to the RV or the first three Samhitās. The first revolt against the Vedic culture may be Buddhism. Gautama Buddha who probably flourished at the lower limit of the Vedic age (500 B.C.) set a new thought to achieve peace in life and how to get nirvāṇa, the highest goal of human beings. At the same time Mahāvīra Jina introduced the Jain faith in this soil. These two atheistic believes flourished rapidly after the demise of these two great leaders. By the intervention of these two thoughts the main stream of the Vedic culture lost its uninterrupted growth. After this age Smṛtis try to regain the Vedic culture. But it could not revive the Vedic era in its original form. They took over more which were not Vedic and had to give up a lot which were Vedic. Even Smṛti period is somehow the revival of Hindu culture as well as Hindu legal system. In the RV we do not find the caste system. Only the Puruṣa Sūkta refers the four varṇas according to the birth from the different limbs of the Puruṣa. A controversy also prevails regarding this Sūkta that this is a later entry in the RV Because the last verse of the RV (10. 191. 4) shows the equality in all respects.

समानी व आकृति: समाना हृदयानि व:

समानमस्तु वो मनो वधा व: सुसहासिति ॥ अर १० १९१ १४ ॥

(i.e., common, (worshippers), be your intention; common be (the wishes of ) your hearts; common be your thought so that there may be thorough union among you).

But the Smṛtikāras are the strong upholders of caste system, which disrupted the social equality. The untouchability and the concept of strong caste preservation privileged the foreigners to convert Hindus into some other belief. In the medieval period Hindu legal system was almost driven away from its
land. In the year 1204 first Iktiyar-uddin-mohammad-Bakhtiyar Khilji in a sudden attack defeated Lakṣmana Sen and Muslim ruler occupied the land of Bengal. Afterwards day by day they occupied the whole India before the arrival of European rulers. Through this period the Muslim rulers imposed the judicial system based on Islamic law. Hindus were also tortured at that period, 'Ziziya kar' (i.e., one type of tax imposed on the young Hindus who are not interested to go to the war) imposed by Aurangeb is noteworthy in this respect.

At the arrival of British in India very limited from of Smṛti law came in rule, i.e., British rulers approved the laws of Smṛti in the case of inheritance. But in the other cases (criminal laws) the English law started to rule in India. It is interesting to note that only after the departure of the British, Indian parliament achieved the sole authority of making law for its people and by the Hindu succession Act, 17th June, 1965, it has abolished the authority of any religious act in case of inheritance which was introduced by British. So, the laws of Smṛtis viz., Manu, Yājñavalkya, Parāśara etc. have lost their authority in India. Though in Bangladesh (South-west part of ancient India) the laws of Manu and Yājñavalkya are in rule in the case of inheritance. But in other case i.e., religious matters are guided by the Smṛti codes in India.

To sum up the ideas of Indian legal system and some relevant matters we have to go through the antecedent chapters with an effective analysis with modern legal system. We will discuss the matter under some sub-heads.

6.1 Concept of Crime:

The concept of crime is found in the very early stage of human mind, which is also reflected in the ancient texts. In the primitive society depriving some one from his right or privilege constituted it and by any means recapture of that right was the holy duty of the person. From the very early age it was treated as a
vile act. There is no clear mention of crimes and its types or nature in the RV. We get a glimpse of idea through some words, which occurred in the RV. Vedic approach was to pray peace and harmony for human beings. Through this prayer when they face up to trouble they asked deities to remove the problem. By this way the concept of crime occurred in the RV. However, the idea of crime is derived from the idea of Dharma and Adharma. Viṣṇu is conceived as the preserver of the entire Universe and the upholder of Dharma. In a Rg ṛṣi states that,

श्रीणि पादा विचकमे विष्णुमौपा अद्वैतः
अतो धर्माणि धारयन् ॥ ऋ १ २ ॥ १८ ॥

(i.e., Viṣṇu, the preserver, the uninjurable, stepped three steps, upholding thereby righteous acts). Here Gopā indicates that Viṣṇu is the protector of the universe (sarvasya jagato rakṣakah). But in the later Vedic or Sūtra period, Dharmasūtras have clearly defined crimes, and a number of crimes are also discussed there. In the Dharmasūtras a full chapter is devoted to Rājadharma which deals with legal institution. The next phase of its development is Smṛti period. In this time ancient Indian logic and legal literature have developed to such an extent which even modern law may envy. We know law is the out come of social and economic conditions of a particular society and the expansion of its intellectual capacity. In this context if we consider the ancient law, there is no doubt that society possessed a very rich culture. We find a lot of similarities in the Smṛtis and modern laws. It is a common thinking of the political thinkers of all ages, that 'the law grows as the nation grows.' Through the ages significant growth comes into light. Some remarkable definition of law of modern thinkers may be quoted here. According to Austin, "Law is the command of the sovereign". Duguit states that, "Law in the fundamental sense the rules of conduct which men know they must observe in order to preserve
and promote the benefits derived from life in society”. T. H. Green states that "Law is the system of rights and obligations which the state enforces". At present, the constitution of every country provides the fundamental rules and framework of laws in its territory. So law is a human creation; any contravention of law is a crime. E. H. Southland and D.R. Cressey say, "An act prohibited or forbidden by law is crime". In the Mahābhārata (Śānti Parvan-92) we find that whatever the king shall fix as Dharma or law is to be considered as actual Dharma or law. Kautilya says the same that, Law for the king is a royal command enforced by sanctioned. And the act, which was not sanctioned by Dharma, was crime. In the Smṛtis crime is named as Vyavahārapada and in the AS Vivādapada (III.16). Yaj. defines it as "if a person, who is set a naught by others in a manner that is opposed to the rules of Smṛti or established usage or conventions informs the king that is a Vyavahāra, Manu in 8.43 prescribes that neither the king or his officers should start a dispute nor should he hush up a matter which has been brought before him by the party. Gautama (XIII. 27) states that a party should humbly approach a judge with his complaint.

Smṛtikāras were concerned about some basic elements, which constitute crime. Kauṭilya, Manu and Yaj. hold that intention and gross negligence are the two main elements that constitute a crime. On this basis they have divided the crimes into three divisions. When criminal intention is involved the crime is grave and so punishment must be heavy. When intention is absent but wrong has been done through gross negligence, the gravity of crime is reduced. But when both these elements are absent the wrongful act is no crime at all and no punishment is to be imposed. Manu holds a very low estimate of the human nature that men are by nature evil, a guiltless man is hard to find (7.22) and men are by nature porn to commit crime, criminality is inherent in human beings (5.56). The same thing we find in Śatapatha Brāhmaṇa, that Satyameva deva
anṛtaṁ manusya (1.1.4), i.e. 'god is truth man is untruth'. In this background they have prescribed severe punishments to the offenders. They also looked into the other factors that played an important role for determining the gravity of the crime. They state that the nature of a crime depends on the learning of the offender, his knowledge, his mental condition, his age, his caste and sex, his physical condition, social status, the time and the place of the occurrence of the crime and its frequency. So it is clear that according to Smṛtikāras an offence is constituted when it is committed intentionally or out of gross negligence. These are also the basic principles of modern jurisprudence. Right from the Vedic to modern period we have mentioned all types of crimes in the previous chapters. We find that Manu is the first who classified crimes in 18 heads. Yāj. divided Vyavahāra chapter under 25 sub-chapters, where we find 20 Vyavahārapadās, or titles of law. But it may be noted that Yāj. omitted the duties of husband and wife from this list as he had already dealt with them in the ācāra section. Also he added abhyāpetyaśusrusā and prakāṇakam and divided Krayavikrayaṁuśaya into two i.e., Kṛitaniyaḥ and Vikriyāsampradānam thus it is 20 topics. Kauṭilya discussed two kinds of law like modern civil law (Dharmasthīya law) and criminal law (Kanṭakasodhana law), but he did not follow the rule hard and fast. He also prescribed some secret crimes, which may be dealt with only by the king through secret agents. At present, lawsuits are divided into two major divisions viz., civil and criminal cases. There are so many sub sections according to the nature of offences. It is quite difficult to count down the heads of lawsuits as Manu classified in 18 heads. And now the act which is prohibited by state laws constitutes crime.

6.2 Concept of Punishment:
Since the time immemorial both the concepts of crime and punishment came to
human mind side by side. All the times a crime is followed by punishment. The ancient texts provide the rudimentary elements of punishment. In the primitive and savage ages as we have mentioned that encroachment of one's legal right was a crime, simultaneously recapture of that right by any means was socially permitted. In this case any punishment may be inflicted upon the offender. Sometimes punishment was given by the society sometimes the person himself. We know that law is nothing but codification of social customs; through the ages these customs became law. As researches of Maine show that law bears less and less the character of command and bears more and more the character of custom founded on consent. In the Vedas we find two types of punishments i.e., eternal or punishment through God and human or punishment from king. Any unnatural calamity was treated as penalty for wrong doings. God Varuṇa was regarded as the inflector of divine punishment. In this regard numerous works of ancient India eulogized punishment and to implement it the necessity of a ruler (king) is forcibly emphasized. The king was treated as the first servant of the kingdom. The interest of a kingdom was preserved above all interests. In Mahābhārata (Śānti. 33) such an idea is reflected that, "if by destroying an individual or a whole family the kingdom becomes free and safe and danger proof it ought to be done in the interest of society." The king is called Daṇḍadhāraka in Mahābhārata (12.67,16.5). Daṇḍa was the most powerful instrument to a king. In the absence of king and Daṇḍa the state becomes a position of Masyāṇyāya, i.e., the stronger will torment the weak as fish are fried on a pike or as in water fish devour each other. We have observed that all the ages Daṇḍa played an important role to rule over the country. Kautilya laid down that a successful administrator carried on by punishing the wicked and rewarding the virtuous men. He prescribed four types of sciences viz., Ānvīkṣikī, Trayī, Vārtā and Daṇḍanīti, among these four science of Daṇḍa is
the root of all sciences.\textsuperscript{8} Accordingly, to the ancient thinkers proper implementation of \textit{Dana} may provide five-fold result. Such as,

1. \textit{Dana} reforms and rectifies the wrong doers;

2. \textit{Dana} gives consolation to the offenders (after getting it they do not do so, in life);

3. \textit{Dana} prevents and checks the commission of crime;

4. \textit{Dana} deters the potentials of offenders from the commission of crime and from the path of action;

5. \textit{Dana} purifies the offender, and also the king.

Kuṭियa, Manu and Yāj. repeatedly asked the king to implement the \textit{Dana} properly and before implementing any type of punishment properly to judge the matter. Manu says, let the king, having fully ascertained the motive, the time and the place of the offence, and having considered the ability of the criminals to suffer and the nature of the crime cause punishment to fall on those who deserve it.\textsuperscript{9} Kuṭियa also says that the award of punishment must be regulated by a consideration of the motive and nature of the offence, the time and place, the strength, age, cond.\textsuperscript{ct}, learning and monetary position of the offender and by the fact whether the offence is repeated.\textsuperscript{10} In fact, these are also the fundamental principles of modern judiciary. Manu says if the \textit{Dana} is properly inflected after due consideration it makes people happy, but improper inflection destroys everything.

According to ancient lawgivers punishment has fourfold result. Modern thinkers say it has eight folds result, but these four are common. Such as, (a) retributive, (b) deterrent, (c) exemplary, (d) reformative.

(a) \textbf{Retributive:} It is the most immediate and animalistic reaction of punishment. In the primitive age there was eye for eye, tooth for tooth punishment which is still prevails in our society. Section 302 of penal code
speaks us that any murder shall cause the life of the offender. It May be noted that Bombay police killed 201 persons in 1997 under the name of 'encounter'. This may be compared with the ancient system.

(b) **Deterrent:** Deterrent is simply an out come of positive approach. It is presumed that if a person is given maximum harsh punishment for not obeying the dictate of the sovereign, it shall act as education to others. It also will prevent the commission of further offences.

(c) **Exemplary:** This is the third principal of inflicting punishment to an offender. Generally deterrent and exemplary punishment seems to be same, but there is a basic difference between the two punishments. Deterrent punishment only may be the concerned to the offender, other may be ignorant about this. But exemplary punishment is the example to others in the view that any one else should not repeat crime. In this regard the ancient lawgivers suggested that prisons should be made on the side of highways from where the distress of the prisoners can be observed by the passers by.

(d) **Reformative:** Modern penal system has laid a great stress on the effectiveness of reformative punishment. In the jails there are so many branches of social works such as, carpentry, handicrafts, weaving shoe-making etc. for the prisoners according to their abilities. In view to improve the mind of a criminal and it might be the possible lively hood in their future life.

Through the ages *Danda* becomes an unparallel instrument to rule over country. And proper utilization of it is the urge from ancient times. Everybody expect *Danda* should be neither too severe nor too mild but should be appropriate to the fault committed.  

Kane rightly observes that these eulogies of *Danda* presuppose the theory that people obey law and the dictates of *Śāstra* through the fear or force of punishment.
6.3 Modes of Punishment:

Through the ages various modes of punishments are used to suppress the criminals. Kautilya, Manu and Yajnavalkya at times prescribed very harsh methods to punish the offender, i.e., an eye for an eye. We have discussed this in the previous chapters.

In modern times modes of punishments are different from the ancient modes. A major development is that modern penologists have rejected the form of expiatory punishment. Also they have denied the punishment of physical torture and capital punishment. The universal declaration of Human Rights in its Article 5 has stated that no one shall be subjected to torture or cruel inhumane treatment. In furtherance to this declaration the Universal Convent on Civil and Political Rights has mentioned in Art 6 that;

(i) No one shall be deprived of his life arbitrarily,
(ii) Death sentence is to be abolished or if allowed should be restricted to some serious crime,
(iii) There shall be no genocide,
(iv) There shall be right to seek pardon,
(v) There shall be no death sentence on persons below 18 years or on pregnant woman.

Most of the countries of the world have signed this declaration. As a signatory to the both declaration of Human Rights and convent of Civil and Political Rights, which is operated from March 1977, India has obligated her to omit all types of torturous punishment or cruel treatment and gradually to abolish death punishment.

But a group of penologists is not in favour of abolishing death sentence considering the socio-political positions and also the increasing rate of the heinous offences. The law commission report of India headed by justice Jaya
Chandra Reddy on August 30, 1997, in its 570 pages says that death penalty as prescribed in the Indian penal code (IPC) should be retained. The commission said, "after examining various judgements till date rendered by the Supreme Court, we reiterate recommendations of the law commission in its 35th report for retention of the capital punishment. But the Death sentence (is) to be awarded in accordance with the guidelines laid down by the Supreme Court".  
A few years back Bangladesh assembly passed a new act on women cruelty. In this act Government imposed death penalty for throwing acid towards women and for rape. It is a fact that, after this act there was a rapid fall down of throwing acid towards teenage or young women. So, it might be impossible at present to abolish death sentence from the developing countries. Even in England top politicians are thinking to re-introduce capital punishment in limited areas.

Now a days, the only mode to implement death sentence is hanging till death. And any death penalty is subjected to the recommendation of Supreme Court. Two very recent judgements may be pointed out here. The first verdict came out from the special judge court Dhaka, in regards to Bangabandhu Sheikh Mujibur Rahman and his family assassination case in 1998. The verdict ordered to execute of its 15 accused by firing squad.

Another remarkable judgement came out from the Lahore court in Pakistan. In an eye for an eye judgement a court on Thursday, 16 March, 2000' sentenced a Pakistani man to death for murdering 100 children in this country's worst serial killing, saying he would be strangled in front of the parents of his victims. The judge ordered 42 years old Javed Iqbal be publicly executed in a Lahore park, suffering the same fate as his victims "you will be strangled to death in front of the parents whose children you killed", said judge Allah Baksh Ranja who ordered the sentence, "and your body will then be cut into hundred pieces and put in acid in the same way you killed the children". He also sentenced him 700
years imprisonment for destroying evidence. The jail sentence was 7 years for each of the 100 bodies that Iqbal is said to have destroyed by dissolving in acid. But Iqbal declared he is innocent and will appeal the verdict. 16

This may be interpreted in two ways, the strangulation and 700 years jail is enough as per modern penal codes. But after the death dissection of his body into hundred pieces and put into acid may arise some question, what is the necessity of this inhumane behaviour? Can it bring more consolation to the parents of the children or it is retributive. These actions also send us back to the savage period of action.

6.4 Sources of Law:

The Vedas are the ultimate sources of law in the post Vedic periods except for those who are atheists. Kauṭilya also agreed upon the supremacy of the Vedas. But he stressed on Royal edicts as the source of law. Kauṭilya says any matter in dispute shall be judged according to the four bases of justice. Such as; 17
(a) Dharma, which is based on truth;
(b) Vyavahāra (evidence), which is based on evidence;
(c) Charitra (customs), i.e., the tradition accepted by the people, and
(d) Rāja-śāsana (Royal edicts), law as promulgated by the king.

Manu and Yāj. both are agreed on four means of sacred laws viz., 18 the Vedas, the Smṛtis, the customs of various men and ones own pleasure. Śrutih Smṛthiḥ sadācāraḥ svasya ca priyamātmanah || But in the modern concept constitution or parliament over all people are the sources of all laws.

6.5 Judicial Institutions:

The RV provides two terms viz., Sabhā (eight times) and Samiti (nine times) which denoted the judicial institutions at that period. The Sabhā also denotes an assembly of gamblers. 19 The Smṛti was attended by the king in the Vedic times. 20 In the Samiti the king delivered justice along with Purohita and a large
number of elites. Naturally there are possibilities for different opinions among the members of the jury. So the Vedic rṣi prays for the spirit of harmony among the members of the Samiti. As the verse follows:

समानो मन्त्र: समिति: समानी समानेन मन: सह चिल्लमेषाम्।
समानेन मन्त्रमभि मन्त्रये व: समानेन वो हृविषा जुहोमी। ऋ १० १०२ १३।

Common be the prayers of these (assembled worshippers), common be the acquirement, common the purpose, associated be the desire. I repeat for you a common prayer, I offer for you with a common oblation.

Another three terms also found in the RV they are Vṛāja, Kūla, and Grāma headed by Vṛājapati. (RV. 10.179.2), Kualapā (X. 62.11), Grāmanī (X.107.5). The Vāj Sam. and Tai Brā. Also speak about some judicial matter. (Vāj Sam. XXX.10; T.B. III. 5.6).

Later Dharmasūtras provided a clear picture of judicial institutions where the king was the fountain of justice. The Buddhist literature described eight types of courts. The accused could be set free by any of these courts. But he could be punished only in case all these courts had found him guilty. The Āgama texts also referred four types of courts.

In the Smṛti age Kauṭilya divided the case matter into two major divisions viz., dharmasthiya (civil) and Kaṇṭakaśodhana (criminal) headed by the court judges (dharmastha) and Magistrate (Prādvivāka). Different types of courts are observed in AS. They are: (a) Samgrahaṇa (the court-centre of 10 villages);

(b) Droṇamukha (the court-centre of 400 villages);

© Sthāṇīya (the Court-centre of 800 villages);

(d) Janapada (Provincial law court); and

(e) The kings own court or the supreme court.

Similar provision is found in MS i.e., lord of each village, lords of ten villages, lords of twenty villages and lords of thousand villages.
Similarly, Yāj. mentions four types of courts that judges appointed by the king (Nṛpeṇādhikṛta), in legal procedure for men, unions or corporation of citizens or villagers (pugā), corporate body (Śrenī), and friends and relatives (Kulāmi).

At present law is divided into two major divisions viz., civil and criminal. In India under the guidance of the constitution of India (Art. 124-147) there is a Supreme Court headed by chief justice of India, who is appointed by the president of the Republic. And under the supervision of supreme court there are high courts, district courts, sub-divisional courts and so on. Also there are various types of special courts under different laws.

In Bangladesh generally law is guided by the constitution of People's Republic of Bangladesh. Under the constitution (Art. 94)) there is a Supreme Court comprising appellate division and High Court division. Besides the Supreme Court and the courts constituted under any law other than 'the code of criminal procedure' there are five classes of criminal courts in Bangladesh. Viz., (I) Courts of session; (II) Metropolitan Magistrates courts; (III) Magistrates of the first class; (IV) Magistrates of the second class; and (V) Magistrates of the third class.

There are some special courts and tribunals under different laws. And under 'the village court ordinance' 1976 there are the village courts in every union. But the village courts have no authority to implement physical punishment only it can impose compensation of maximum 5000/- rupees.

6.6 Appellate authority:

In the past king was considered the foremost appellate authority. But at present Supreme Court is the topmost appellate authority. Also the senior court accordingly may review or justify the judgement of the immediate junior courts. Normally the judiciary is separated from executive departments.

6.7 Assembly:
We have mentioned when there is a conflict between *Sruti* and *Smṛti* the former will prevail and conflict between *Dharma* and *artha*, the *Dharma* will prevail. But for the very complicated matter the decision was given by the assembly. Gautama suggests an assembly consisting of 10 members. Manu the same but he mentioned the persons should be selected three from principal *Vedas*, one from *Nirukta*, one *Mīmāṃsā* one sacred law, there from different caste order and one logician. *Yāj.* says any doubt should be cleared through the *Sabhā* which consists of four or three *Brāhmaṇas* from each *Veda*. It is needless to say that at present to the national assembly belongs the sole authority to pass any law. But Supreme Court may interpret the law and if it is contradictory to the fundamental law it can be declared null and void. Such as one part of eight amendment Bill (Act. XXX of 1988) of Bangladesh constitution was declared void by the Supreme Court of Bangladesh.

6.8 *Stages of a judicial proceeding*:

The ancient lawgivers followed four stages of a judicial proceeding. Such as; 23

1. The plaintiff or *Bhāṣā-pada* or *pratijñā*, 2. The reply or *Uttara-pada*,

3. The proof or *Kriyā pada*, 4. The decision or *Nirṇaya*.

Modern judicial system is not far away from this process. Presently we are following the same four fold stages of judicial proceedings. When a complain advances to the court the judges should open a file and should examine the complaint fairly. If it is not imaginary and prima-facie if it is proved the court shall send summon or warrant to the defendant to reply the complaint or he may send it to inquire to civil officer or police. Then the charge frame and hearing of the witnesses i.e., the proof. After hearing all the witnesses the court may ask that the defendant, he is guilty or not, if he confesses he may get punishment as per penal code, but if he wants to prove the innocence through witnesses he is allowed. Then the judges will examine the witness of sides both and come to
the decision. So these are almost same to ancient system. We may tabulate the modern system.

6.9 Modes of proof:
In the past modes of proof were divided into three parts i.e., Human, Divine and when there is no evidence the king. Regarding the divine proof Manu says two types of ordeals where as Yāj. mentions six. Reference of ordeal is also found in the medieval England, handling of red hot iron and plunging one's hand in
boiling water were common ordeals. But it was abolished in 1215 AD. In the medieval India Muslim rulers did not permit ordeal as a valid mood of proof. During the reign of Alauddhin Khilji a person named Siddi Maula was charged with treason. There was only one witness against the accused. So the Kazi was unwilling to punish him. The Sultan approached him to prove his innocence by walking over fire, which was not accepted by the Kazi. Emperor Akbar is reported to have offered an ordeal to an accused to prove his innocence. But Kazi opposed it. During the Maratha reign ordeals were in vogue. But British ruler prohibited it. And at present it is strictly prohibited. 

6.10 Ombudsman:

Ombudsman is not a recent term. It could be traced as far back as 2000 years ago. When the first ombudsman flourished in China during the Hun dynasty. However this history was short lived and soon the concept faded into the folds of antiquity. The modern reinvention of the concept occurred in 1713 when Charles XII, the king of Sweden at that time appointed one of his councilors to be "koningen hogst Ombudsman" or the king's highest Ombudsman and charged him with the duty of prosecuting Government officers and others who contravened the law.

In ancient India we do not find the idea in the ancient texts. But we find that ancient lawgivers were very much anxious about the malpractice of the Government officers. Kautilya, Manu and Yaj. have prescribed severe punishments to suppress these officers. Manu says, the servants of the king who are appointed to protect (the people), generally become knaves who seize the property of others; let him (king) protect his subjects against such men. Kautilya emphasized on the subject and gave charge to the administrator (samāhartṛ) and magistrate to keep watch over the heads of the departments.
But the concept of modern ombudsman is not found in Āśī. The first notion of the concept in India was expressed by Mr. C. D. Deshmukh, the then chairman of the University Grants Commission and a former union finance minister, during the course of a public lecture in Madras in July 1959. Through this way the first serious step to establish the institution of ombudsman in India came with the introduction of the Lok Pal Bill in the Lok Sabha on May 9, 1968 as a direct sequence to implement the recommendations of the Administrative Reforms Committee, headed by Morarji Desai, set up by the Government of India on January 5, 1966. The committee had strongly recommended the setting up of two institutions, the Lok Pal at the centre and the Lok Ayukta in each state. The Bill was finally passed by the Lok Sabha on August 20, 1969. However, while it was pending in the Rajya Sabha the Lok Sabha was dissolved and the Bill consequently lapsed. The Bill faced same fate in the year 1971, 1977 and 1991.27 So still the Government of India failed to introduce the Ombudsman in India. In Bangladesh Act. 77 of its Constitution provides that Parliament may, by law, provide for the establishment of the office of Ombudsman. But still it has not been introduced though there is a strong political and public support in this respect.

6.11 Writs:

Writs are a form of written command, which deal to act or not to act some way. When there is no remedy to the customary law one may write to the High Court division for his cure. At present there are five kinds of writs. Such as, (i) Habeas corpus, (ii) Mandamus, (iii) Quo-warrant, (iv) Prohibition and (v) Certiorari. Kauṭilya mentioned eight kinds of royal writs viz., (i) Command, (ii) Information, (iii) Guidance, (iv) Remission, (v) License, (vi) Gift, (vii) Reply and (viii) General proclamation.28 Difference is that Kauṭilya’s writs came out
through the kings court or order where as modern writs come out from High Court division.

In an analysis Damayanti doongaji has shown seven chief points of difference between the ancient and the modern law. They are:

1. The ancients had a very large number of offences, which were punishable by death.

2. This punishment was not prescribed only for cases in which death had actually resulted or was likely to result, but was prescribed even for such crimes as theft, adultery arson, kidnapping, abduction and the like.

3. There were a very large number of ways in which this punishment was carried out, and not by the simple process of hanging only as in modern India.

4. Even the methods of inflicting this punishment had a two-fold purpose, causing torture at the time of death and not causing it.

5. Whereas it appears that in modern India death is the exception so far as the ancients were concerned it was the rule.

6. Today, the underlying principle appears to be retributive whereas in ancient India it was definitely deterrent as can be seen from the fact that the punishment was carried out in public places, in a large number of ways, and even the corpses were left on roads for dogs to devour.

7. Law is the same so far as the death penalty is concerned today for all irrespective of caste, colour or creed and the same set of principles govern every case, but in ancient India it was partial to the Brahmins who could never be awarded capital punishment or even mutilation.

These are seven chief points. There are so many similarities and dissimilarities among the ancient and modern law. But it is not necessary to count down all the points. Just we have mentioned some important points, which could help to understand the ancient system. A student of indological studies must keep it in
mind that India is a land of people of various races and cultures. From the very early stages the society is based on these multi-cultural activities. The land becomes the mother to all. Rabindranath Tagore beautifully narrated in his poem ‘Bhārat-Tīrtha’,

हेय आर्य हेय अनार्य
हेय दुर्भिक चीन।
शक हुण आर पाठान मेगाल
एक देहें हलो कीन।

(This is the land where all classes of the people viz., Ārya, Anārya, Drāvida, Chin, Shak, Huṇa, Pathān and Mogal have been absorbed through the years).

So to understand the ancient law one must conceive the idea of ancient Indian culture and custom, which helped to build up a civil society.

To show the utility and essence of the indological studies the saying of two great men may be noted here. James Bryce says that, "The past can never be effaced since the recollection of it is an element in shaping the future". And the architect of modern India Jawaharlal Nehru Says that, "The change is essential but continuity is also necessary. The future is to be built on the foundations laid on the past and the present".

To conclude, it may be pointed out that there are a lot of things, which could be followed. There is a need to inculcate our glorious past, which could provide the treasure of the past. There are many things, which seem to be useless or irrelevant. We should eliminate the bad things and pick up the good ones to enrich a healthy and prosperous civil society.
References

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6. Māhābhārata, Śānti, 15.30; 67.16; Rāmayana-II, Chap. 67; Satapatha Brāhmaṇa, XI.16.24; MS. 8.14, 20; AS etc.)
7. AS, 1.4.4-6.
8. AS, 1.5.1.
9. MS. 8.126.
10. AS, 4.10.
11. MS 8.19.
12. The Indian express, Thursday, June, 18, 1998.
13. AS, 1.4; MS, 8.16, Sānti-parva-15.1, 65.21; 103.34.
15. The Indian Express, Wednesday, 10 June, 1998.
17. AS, 3.1.39, 40.
18. MS, 12, 12.110, YS. 1.7.
19. RV, VI.28.6; X.34.6.
20. RV, X.97.6.
22. MS. 7.115-117.
23. Yaj. II. 5-8.
26. MS. 7.123.