Aspects of society as reflected in the rules of
Prayascitta and Danda.

It is widely assumed and often asserted that the ancient Hindus so much exerted themselves in pursuit of the abstract metaphysical speculations that they overlooked the more practical and worldly problems, like those of social organisation. This view undoubtedly, is untenable and is fundamentally incorrect. In fact, they gave a serious thinking to the problems connected with social organisation and even formulated for themselves a scheme of social life for securing the best possible results that they aimed at. The scheme which was evolved after a long experience of corporate life paved the way for a well-ordered society so as to live in a harmonious way in full economic vigour and political strength. This must, however, be admitted that the Hindu Dharma Sastras primarily concern themselves with the four varnas or da classes. They exclude a large part of the population consisting of the aboriginals, forest-dwellers and the people from the hills from their purview. They were left to themselves to evolve their own mode of life in matters social and also religious to some extent. The process of assimilation of these sections of the population to the main current social life was rather slow and careful.

While dealing with the sociological aspect of the people of the dharmasastra period, we must keep in mind that all forms
Of social organisation including the various social institutions, emerge out of human needs. The human needs define human interests, purposes and aspirations, and the actual planning or devising of the different forms of social organisation. The norm of life and conduct of a Hindu, social as well as individual, was determined by those purposes and aspirations. The fundamental meaning of life and existence which permeates through all forms of social organisation find clear expression in the Hindu dharma sastras in regulating and directing the conduct of the individual's life.

The Hindu view of life holds that this life itself would have no meaning if the proper value of life and existence is not thoroughly understood. It has meaning only as a link in a chain of births in the past and in the future. It is thus a stage of transition from past births towards future birth or births, unless final liberation (mokṣa) is obtained within the span of this life. Consequently, the birth of a human being is but an opportunity for him or her to free himself or herself from the bonds of this, chain of births by living a life of 'dharma' - transgression from which leads him to sin. The dharma-sastras seek to so regulate the life of the Hindus both as individuals and as social beings as to make the same conducive to the realisation of that goal. Interestingly enough, Manu, Yājñavalkya, Parāśara and many other law-givers devote a considerable part of their works to the question of spiritual realisation and end invariably with this topic. This indicates that whatever else has been said and recommended are all subservient to the main purpose
of human life which is final liberation. The four stages (āśrama) and the four classes on which the social structure is built are meant only to create and maintain proper conditions for this end. This is not without significance that the Manusmṛiti begins with the story of creation and ends with moksha and means to that end.

Transgression from the right course leads to sin and such transgression often results in an offence against the society. Individuals look forward for instant effect for the loss suffered by them. Furthermore, a person has no right to tamper with the smooth sailing of life. Murder and theft are always considered to be a sociological menace. Divine sentiment plays a major role on the people of ancient times and there are a number of do's as well as don'ts. People are to do only such acts as are sanctioned by society and avoid those condemned by it. Any transgression is not forgiven and is regarded as an offence against the society. These offences are the crimes propounded in details in the dharmaśāstras. In the earlier period i.e. in the period of vedic age the ideas of sin and crime were intermingled but in the period of dharmaśāstras a clear line of demarcation is found between the concepts of sin and crime.

Yājñavalkya requires the king to punish and bring to the proper path, castes and guilds when they swerve from their dharma. Kāmandakya says in the same way and adds that in the absence of danda the world will revert to the state of mātasya-nyāya (the

1. Yaj. I. 361
(the strong devouring the weak)². Kautilya also is sceptical about human nature. He says that men by nature is similar to horses, they change when employed in works.

The proximate goal of the state in India is to create such conditions and environments as would enable all men to live in peace and happiness, to pursue their avocations, to follow their own customs and usages and their own callings or svadharma, to enjoy without interference the fruits of their labour and the property acquired by them. Thus the Hindu sociology exhibits a happy and harmonious blend of order and progress. Its aim is to secure a stable yet progressive social order and lend every one to the joys of supersocial spiritual life and to achieve the liberation of spirit. The ultimate purposes of Hindu social discipline are that men should unify their individuality with a wider and deeper entity than individual life. They should try to fulfil their appointed tasks regardless of failure or success.

We can understand Hindu social ethics aright only when we realise the significance of the Hindu social order. The Hindu feels that the things of life and world and worldly relations are fetters in the way of his freedom. Thus the fundamental chord of Hinduism is so arranged that all dharmas and karmas have to be and can be so adjusted that ultimately they would enable the individual to attain the ultimate dharma for which alone he is born as a human being.

We need but glance through the subject matters treated and the way of approach to them to understand that it is the preservation of the varnāśrama system which the ancient Hindus adopted under the inspiration of a specially-evolved philosophy of life. This idea is in the forefront of the mind of the smritikaras for in stating the purpose of their work the authors of the smrtikaras almost in one voice, refer to the need of prescribing duties of different varnas in different stages of life (Āsrama). True to its aims and objects the dharmasāstra has touched almost every aspect of our life in its relation to the family, society and the state keeping the spiritual well being of the individual as the main goal. The scope of the present chapter is however, limited to the discussion of the light thrown on different aspects of the society by the theories and principles of penance and punishment as found in the Dharmasāstras.

The whole of the life of an individual is, for the Hindus, a kind of schooling and self discipline and during the course of this schooling, he has to pass through four stages - four grades of training, as it were called the four āshramas or four orders of life. In order to understand the psycho-moral basis of āśramas proper, it is advisable that we should look into the theory of purusārthas which concern themselves with the understanding, justification, management and conduct of affairs of the individual's life in relation to the group in and through the Āśramas.

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4. Visnu Smrti I.60; para Smrti I.17; Harita I.2; Samkha I.1.
we speak of these purusarthas as the psycho-moral bases of the asrama theory, because on the one hand, the individual receives a psychological training through the asramas in terms of lessons in the use and management of the purusarthas and on the other hand, in actual practice, he has to deal with the society in accordance with these lessons. Here again we have to keep in view the distinction between the actual state of the society that existed in the time of dharmasastras or even earlier and the nature of the society aimed at or rather a society conceived as the ideal one by the author of the Sastras. The lawgivers gave rules to be followed and the kings and the social leaders surely insisted on putting them into practice at the point of legal or social action against some sort of infringement and to that extent the rules of prayascitta and danda indicate the true state of the society. On the other hand there are rules and regulations which point more to the ideal character of things which by their very nature needed relaxation according to the demand of the situation. The dharmasastras seek to deal not only with what is but also with what ought to be, that is, not only with actual individuals or human groups but also with ideal individuals or human groups. Thus the Hindu social thinkers have given us theories of social institutions and organisations which embody social and individual ideals. These social institutions are the outcome of necessities of life and have had the advantage of deep social thinkers behind them. They are devised to enable man as far as possible, to reduce definite ideas, ideals and purposes into concrete human conduct and affairs.
Varnāśrama in its strictest sense was, more or less, the picture or the blue print of the society that the seers placed before themselves. It never realised the ideal in toto. It was hardly possible for all, for example to retire at the age of fifty or near about from the world to lead a detached life of strict discipline and self-denial of a vāna-prastha. The authors of these rules were conscious of this fact. No student of smṛti literature can, however, assert that the system whose beginning and developments are traceable from stage to stage were wholly imaginary or ideal. It is only that the Hindu seers place an ideal picture of a society that is to be attained.

It is the preservation of varnāśrama system which is aimed at by all the dharmaśastras and it becomes crystal clear from the Yājñavalkya Smṛti when it says—"It is the king's duty to discipline and put again on the right track all those who transgress (in his kingdom) the rules binding on families, castes or groups. All the four means (caturupāyah) are to be employed to overcome opposition and bring back to their appointed mode of life or conduct men of all varnas and all stages of life (āśrama)."  

Varnāśrama system was the test of civilized living according to the seers of the dharmaśastras. Viṣṇu lays down that "the country, where the varnāśrama system does not exist may be considered as the country of the Mlecchas". The varnāśrama system

5. Yāj. Smṛti I.361  
6. Viṣṇu Smṛti 84.4.
sought to achieve the following -

(a) to give relative importance to the four essential factors of proper working of the social life of a people; (i) preservation and advancement of knowledge; (ii) Government including military power; (iii) Production and distribution of wealth; (iv) Labour.

(b) To maintain the balance of economic activity of the people preventing accumulation of enormous wealth and providing sure source of employment for all which in turn reduces the struggle for existence to the minimum.

(c) To preserve hereditary qualities as far as possible.

(d) To inculcate sense of duty in respective spheres and to encourage contentment instead of unrest which alone can maintain an atmosphere of peace and cooperation.

While discussing the above factors, we would find that the institution of caste springs from a very natural and universal phenomenon of inequality. It is, indeed, impossible to believe that all things human and phenomenal are equal and completely harmonious in growth and behaviour. What since the dawn of creation to this day there has been constant and world-wide reign of inequality. This inequality is, however, not created by any external force. It is inherent in all persons belonging to all times, and this law of inequality of human beings in capacity, temper, growth, intellect, desire, body etc. has been the foundation of the institution of varna in India. The dharmasastras explain successfully, this inequality on the basis of 'karma'.

The smerti writers, it seems, believed in the organic
theory of society. The society of that period is a cumulative one made up by all the individuals of that particular society. Each section of the community had its allotted place and function and each was as important as the rest for the achievement of the common welfare. There was no scope in that society for competitive or individualistic principle. This system not only prevailed in India but also was recognised in other places. This may be seen from the following passage from the work of a learned jurist: "Thomas Aquinas held that Christian theology was faced with the problem of explaining God's arrangement of society. From the spiritual point of view, there was no difficulty in assigning to each man and to each class of group a position higher or lower in the scale of existence and in demanding from every one that he should be satisfied with his lot and be true to his duties, that he should fulfil the task assigned to his caste and status by Providence." 7

So individuals and classes are bound to one another by a chain for the welfare of the society. Every individual had its place in the society and respective duties are assigned to them. The society expect from each man his duties for the welfare of the society and in turn grants to each and every individual an opportunity for self-expression. Consequently, it can be asserted that the fourfold scheme is a limited democracy giving equal opportunity and right to each and every individual to express him-

7. Vinogradoff Sir Paul, Collected papers Historical Jurisprudence, Re.II.457
self in his own sphere of life. It assumes that in every individual there is a self which has the right to grow in its own way so as to make it possible for one to express himself. It insists that every human being shall have the right and opportunity to contribute to human achievement with relation to his capacity. Society must be so organised as to give individuals sufficient scope to exercise their natural energies without being interfered by others. Hence all work is socially useful, and from an economic standpoint equally important. In this scheme inequality in ultimate analysis is only apparent but the conception of social organisation and institutions give us definite glimpses of what may be called the ideological and valuation foundation. These seek to deal not only with what is, but also with what ought to be.

The Hindus accepted inequality as a pre-determined factor. It is sincerely believed that “he whose deeds are good becomes good, he whose deeds have been evil becomes evil. By holy deeds he becomes holy, by sinful deeds he becomes sinful. It is for this reason that they say that a person consists merely of desires (kāma), as his desire is so his will (kāra), as his will is similar is his deed (karma), as his deed, so his evolution”. This verse clarifies the position as to why some persons who should deserve happiness and success in life as judged by their deeds in this life meet with failures and unhappiness, while on the other hand,

the undeservings seem to succeed.

It is held that a brāhmaṇa is always engaged in good deeds and there should be no interruption thereto. Vignānéśvarā commenting on Yājñavalkya holds that a brāhmaṇa is busy with learning and in the discussion of the meaning of the texts and with the ritualistic practices incidental to his status.9 The Brāhmaṇas, therefore, represent the intellectual side of vedic life.

Position of the Brāhmaṇas - Privileges and handicaps:

In the Hindu scheme life becomes more difficult as we rise higher up. A brāhmaṇa can do nothing for the sake of enjoyment. In India criminal responsibility was rightly held to rest on knowledge and discriminating power. The higher varnas were regarded as possessing the capacity in a higher measure than the lower. This will account for the rule laid down by Manu, that the capability of a śūdra is eightfold that of a vaiśya sixteenfold, of a ksatriya thirty-two fold and of a Brāhmaṇa sixty-four fold or a hundred fold or even twice sixty-four fold.10

Punishment thus depends on the psychological make up of the individual. The higher he is in the scale of evolution, the more he must realise his responsibility. It is, thus, necessary that the Brāhmaṇa, who is a model for men of the world to follow, should pay heavily for his crime. The Brāhmaṇa culprit was subjected to pointed ignominy in addition to his punishment.

9. Vignānéśwar on Yaj Śr. I II.2
10. Manu Smṛti VIII. 337-338
Owing to his learning he carried heavy responsibility on his shoulder and so he is only spared physical tortures. In effect the branding operates as a severe punishment. He becomes a social and legal outcast - an outlaw. Further if turned out of his country he is worse off for he has to die of starvation having entailed loss and forfeiture of property.  

The measure of power of the Hindus is not money, secular position or military power but the spiritual culture. The notion of fundamental respect for the Brāhmaṇas originates in his unquestionable spiritual and moral superiority and attainment. The Brāhmaṇas were regarded as the traditional teachers so much so that he led a life of glowing example of learning and purity, virtue and wisdom, service and renunciation. Muni does not hesitate to degrade the entire family of a Brahmaṇa to the level of the lowest class if he deviates slightly from the high standard of Brāhminhood. A Brahmaṇa is expected to be armed with only spiritual powers, sanctity and austerity and if he fails he is no better than a man of the lowest class.

A brahmaṇa is immune from both death and corporal punishment. All that is done to him is to shave off his head - the tuft, to brand him on his forehead with marks of infamy and is banished from the society or imprisonment and made to do ignoble kinds of works. The former punishment by depriving the criminal Brāhmaṇa of means of expiation or purification as he has become an outlaw.
virtually sentences the wrongdoer brāhmaṇa to death by starvation outside the society. This is again followed by the dread of postmortuary punishment for the unexplained crime. Further, shaving off the head has a religious significance for the tuft has a religious value attached to it. The punishment thus meted out may be described as worse than capital punishment, which if undergone, expiates the crime.

This special treatment accorded to the Brāhmins by the Hindu criminal law came to meet with strong criticism at a later period. Maine thought fit to say that the Brāhmins claimed 'to be free of the criminal law which they themselves prescribe'. Mr. Jayaswal criticises this immunity very strongly.

While discussing the feasibility of such immunity, we must keep in mind the very fact that the Hindu criminal law prescribes two kinds of punishments - secular and spiritual. In the case of the Brāhmin, the spiritual penalty is much severe than in the case of the other castes and in fact the fear of such penalty is more severe than the fear of secular punishment.

It is laid down by the early law-givers such as Gautama that if a learned man or one of the higher castes offend, he shall be liable to more severe punishment. This, as a matter of fact, is not founded on any principle of caste discrimination. This may be for the fact that the offence when committed by a man who knows that it is prohibited should be greater. This fact

14. Ibid. IX. 241
15. Maine, Early Law and Custom, p. 47
has not been ignored by Manu which can be seen from his text. This, indeed, is a common feature of all early systems of law to prescribe a severer penalty when a man belonging to a higher caste was the victim of an offence committed by a member of lower caste and as such, this is nothing peculiar in Hinduism, not to speak of the practice still obtaining in the White Countries when the alleged victim belongs to a white race and the offender to a coloured race.

The notion of the sanctity of the brahmins life and body seems to have come down from the Vedic period, from a time when Brahmins were apparently leading a truly religious life. Further both Gautama dharma and Bandhāyana exclude corporal punishment in the case of Brahmin. The Bandhāyana Dharma Sūtra says: "Of course the Brahmin cannot be punished in his body for any offence." The particular word 'vai' in this text refers to Vedic origin which is enunciated by the commentators.

It is noteworthy that even the Artha Sāstra recognises this exemption when it lays down: "Whatever may be the nature of the crime, no brahmin offender shall be subjected to physical pain." In the very next sentence it is said: "The face of the Brahmin shall be branded so as to leave a mark indicating his crime: the sign of a dog for theft, that of a headless body for murder, that of a female private part for rape, on the teacher's wife and that of a flag of vintner for drinking liquor.

17. Manu Smrti VIII. 337-338
After having thus branding and proclaiming his crime in public, the king shall either banish a Brāhmin offender or send him to the mines for life.” This passage makes it clear that the context relates to a brāhmaṇa offender found guilty of a crime that should be dealt with. Subject to small differences, this is just the king of punishment prescribed for the brahmin, both by the earlier Śūtras, and by the later smṛtis, when he is found guilty of a grave crime. This is enough to refute the arguments of Mr. Jayaswal that it is in the smṛti period that the brahmins came to secure such a high place so as to get themselves immune from corporal punishment.

Next we pass over to the discussion of the claim of the brahmin community from the jurisdiction exercised by the ksatriya kings. This also can be relegated to the vedic period. It is natural that during the period of fighting the kings secured such power that there arose tension between these two classes. We see a glimpse of that in kātyāna's writings. Gautama also lays down “the king is lord over all except the brahmins” - “rāja sarvasyeste brāhmaṇa-badham”. So the brahmins in order to have security of life laid down certain rules so as to place themselves beyond the jurisdiction of the king. The status of the brahmin can be ascertained from the classification of mahāpātaka.

Brahma-hatyā - While dealing with this particular ‘pātaka’ a natural question that crops up in our mind is that why so much
importance was attached to homicide of this particular class and in what way it was worse more heinous. It is argued by some that it is just to retain the superiority of the brahmins over others and to ensure security of life and property for them. We are to see how far this notion is tenable and what state of society is reflected in such apparently undue privilege allowed to a particular caste. These are some of the questions which require discussion and for this we must peep into the background that must have necessitated a code of this nature.

We can, however, safely assert that brahma-hatyay was considered the most heinous of crimes long before the Dharma Sastras were compiled. The dharmasastras merely codified the existing laws. In the Brahmanas we find reference to this as the greatest crime - 'tarati brahma hatyam' - etc.

The reason for placing so much importance on the life of brahmin is the anxiety for preservation of the vedas. This was a time when an extensive literature consisting of the four vedas and other literary pieces had to be preserved by committing everything to memory. The number of people engaging themselves in this arduous task was very small. The compulsory duty of a brahmin was learning, teaching, performing sacrifice and discussing the religious matters. He had the whole veda or a part of it in his memory. He was a living library as the vedas were not reduced to writing. The second duty made it compulsory for him to impart the vedic knowledge he possessed to competent students. Premature death of such a person was a national loss - a break in the
continuity of vedic studies. A vedic scholar even now is regarded as 'veda-murti' - the veda incarnate i.e. the receptacle of supreme knowledge. To kill such a person amounted to killing of the vedas. If such a man dies and that too an unnatural death the loss to the cultural life of the society is beyond repair. With the passing of such a man vedas he carried in his memory are also gone as there was no written books at that time. Anybody who is responsible for causing untimely death to a person so important for propagation of the vedas is an enemy number one of the society and his sin and crime must be equally grave.

This rule does not confine itself only to the killing of a brahmin who carried the vedas in his memory but it applied to any member of the caste. This extension of the rule was necessitated by the anxiety on the part of the law-givers to avoid confusion and to give any scope for the plea after a person is murdered that so and so is killed but he is not a vedic scholar. Learning and teaching are compulsory for every brahmin. The presumption therefore is that every brahmin is a vedic scholar or potential vedic scholar. The killing of any brahmin therefore cause to be regarded as the most heinous crime.

Suvarna-steya : Theft of gold stolen from a brahmin is considered to be a grave sin. Here it is pertinent to ask why it it that gold stolen only from the brahmin was considered to be a grave sin. The reason for placing so much importance to the property of a brahmin is that the brahmin collected wealth for
pursuing religious acts such as sacrifices etc. The gold which belongs to the brahmin was also meant for sacrificial acts. So theft of such property is naturally considered to be one of the gravest crimes. Further, whatever a brahmin collects comes from performance of religious observances so theft of gold amounts to stealing some religious utensils.

It is to be noted that later commentators hold that "suvarna stena" does not relate only to gold belonging to a brahmin only but the rule extends also to members of other castes. The vedic varnasrama system prevents accumulation of enormous wealth in one's hand and thereby maintains the balances of social economy. So the members of different castes can have only so much so as to reduce struggle for existence to the minimum. Hence the property stolen from members of different castes would necessarily hamper the smooth sailing of the life of the individual.

Gurutalpagamana: This word has been interpreted differently by different scholars. Manu and some others hold that the word 'guru' here refers to the wife of the preceptor. It is to be noted that at that time the forest institutions were residential; the students used to stay in the house of their preceptors and learn the vedas and other courses. They had to stay there for quite a number of years. These students became the members of the preceptor's household and helped the wife of the preceptor in the discharge of her household work-also. That way there was every possibility for a student to become intimately connected with the wife of the preceptor. This sort of happening was more
possible in case of a young wife of the preceptor. History reveals the fact that most of the preceptors used to marry at a very old age and so the students being young there was possibility of having infatuation towards the wife of the preceptor. In order to prevent this kind of happenings, the Hindu thinkers formulated these rules to keep the moral order of the society.

Some law-givers interprets the term 'guru' as father, uncle etc. but considering the natural likes and dislikes of men in matters sensual, frequency of undesirable connection with a preceptor's wife in a society in which young students live as inmates of educational homes must have been greater than with female elders of one's own family or relatives so as to attract alarming attention of the law-givers to formulate strict and severe rules regarding violation of guru's bed. The rules later on were extended to other sexual transgression of similar nature involving respectable female relations and along with it the term 'guru-talpaga' too acquired an extended meaning to cover cases of sexual transgression with the wives of father, uncle, etc.

Mahapatakasamsarga: Intimacy is held to produce first a tendency to condone lapses in others and subsequently to imitate the lapse himself. If there is no social bar against those who outrage decorum in the highest sense i.e. by moral transgressions or open violation of enjoined duties, the evil will spread silently and undermine spirituality. It is that which formulates two principles in Hindu organisation: (1) everybody's action has a repurcussion on other and establishes a bond of sympathy between
all members of the society and (2) the idea is extended to unity of the self with Self. One is asked not to do anything to another that he would not like to be done to himself. He alone who looks on all beings as his own self is the one possessing the correct vision.

**Position of the Sudras in the Society:**

It is, however, doubtful if the sudras ever formed a single caste. The term sudra probably covers numerous inferior races that came within the Aryan fold after being conquered by the Aryan invaders. In course of time even men of Aryan descent also came to be included among sudras. This social inequality, if any implied by this system, does not appear to have led to ill-will or heart-burning, so long as it does not involve disparity in material advantages.

**Sutra Period:**

Sudras did not enjoy equality before the law even in the criminal cases. Gautama prescribed a fine for a brāhmaṇa if he abused a kṣatriya or a vaisya but not if he abused a sudra. Gautama further maintained that if the sudra intentionally reviled a twice born with criminal abuse or assaulted him with blows which amounted to criminality, he will pay for it by forfeiting the limb with which he offended. Āpastamba bluntly states that if a sudra abuses a law-abiding aryya, his tongue should be pierced. Penance provided for the expiation of sins of abusing respectable

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21. [Gautama DāS. XII. 11-13]
22. [Ibid. XII.I]
23. [Āpastamba DāS. II.10.27.4]
persons and speaking minor untruths also discriminate against
the sudras, who was ordered to fast for seven days in such
cases.

Laws provide the most severe punishment for the sudras in
case of adultery. Apastamba lays down that if a sudra commits
adultery with a female of the first three varnas, he should be
put to death while the woman might be purified by just a
penance, if no child was born from their adulterous intercourse.
But banishment was the punishment for an aśūra, if he committed the
same offence with a sudra woman. In case of theft, the law
as laid down by Gautama, imposes the smallest fine upon the sudra,
which increases if the offender belongs to a higher varna. If a
sudra has to pay eight times the value of the stolen property,
the brahmans has to pay sixty-four times. This fact might
indicate the former's inability to pay higher fines, but law
presupposes a higher standard of conduct on the part of the
members of the higher varnas and they were not expected to commit
thefts. This is in keeping with the provision that only members
of the first three varnas should be appointed officials, whose
chief function was to protect the people against thieves.

The nature of penances for expiation of the sin of murder
also differs with the varna of the murdered person. Gautama
maintains that a man guilty of killing a kṣatriya, should maintain
the normal vow of continence for six years which is three years for

24. Ibid. I.9.26.4
26. Ibid. II.10.27.10
28. Gautama DuS. XIII.16-16
25. Ibid. II.10.27.9
27. Apastamba DuS. II.10.27.8
29. Apastamba DuS. II.10.26.6-8
killing a vaisya and one year for killing a sudra. Vasistha, however, increases the term of the penance by three years in the case of a Ksatriya or a sudra. But the samabidhana brahmana, which is regarded by Burnell a work of this period, provides the same penance for the expiation of the sin of killing the members of the first three varnas prescribing a different penances for the sin of killing a sudra.

Thus during post-vedic period with the emergence of society based on varna and complete effacement of tribal society, members of the sudra varna ceased to have any place in the work of administration. They were excluded from all administrative appointments and subjected to corporal punishments for minor offences. This perhaps was the punishment as they could not generally afford to pay fines. The penalties laid down by the rules of penances and criminal law in respect of the sudras were higher in proportion to the sin of killing a vaisya or a sudra. According to him if a ksatriya defames a brahmana, he shall be fined a hundred panas, vaisya 120 or 200 panas, a sudra shall suffer corporal punishment. If a brahmana defames a ksatriya, a vaisya or a sudra, he shall be fined 50, 25 and 12 panas respectively.

Manu:

Manu, like the other law givers of that early time is guided by the consideration of varna in the administration of justice. In his law too sudras are the ones who suffer the most. According to him if a ksatriya defames a brahmana, he shall be fined a hundred panas, vaisya 120 or 200 panas, but a sudra shall suffer corporal punishment. If a brahmana defames a ksatriya, a vaisya or a sudra, he shall be fined 50, 25 and 12 panas respectively.

32. Sam. Br. Intro. PX 33. Ibid I.7.5-6
34. Manu Sam. VIII: 267 35. Manu Samti VIII. 268
The fact that defamation of sudra causes a fine of 22 panas to a brāhmaṇa is very significant as in such cases Gautama dharma sastra prescribes no fine.

Manu lays down very severe punishments for sudras offending against the members of the superior varṇas. He maintains that if a sudra insults a twice-born with gross abuse he shall have his tongue cut off. Further if a sudra mentions the names and castes of the twice born with contempt an iron nail, ten fingers long shall be thrust red-hot into his mouth.

Punishments prescribed by Manu for the sudras are very harsh and at times inhuman even in cases of assault and similar crimes. A low caste man hurting the highest caste will be penanced by cutting off the limb used in the act. A sudra spitting on a brāhmaṇa will lose both his lips by king's order and by urinating he will lose his penis. Manu lays down a general rule that the king shall inflict on a base-born sudra, who intentionally gives pain to brāhmaṇas, various corporal punishments which cause terror. Pain here means both physical pain and pain caused by stealing his property.

From the above enumerated provisions directed against the sudras offending the brahmanas we get the idea that the relation between the highest and the lowest varṇa were very strained. We however have no solid evidence whether all such provisions prescribed in the law books were carried out. Harsh punishments however are not prescribed by Manu in the case of people of equal

36. Gau. Dh.S. XII. 13 37. Manu Sam VIII. 270
38. Ibid VIII. 271 39. Ibid VIII 279
40. Ibid. IX 248 41. Kul. on Manu IX 248
castes assaulting each other.

We may deduce from different verses of dharma śāstras that Manu attached very little importance to the life of a śudra. Manu states that slaying woman of śudra, vaisya and ksatriya is a minor offence, causing loss of caste. This rule perhaps emphasizes the life of a brāhmaṇa only.

For stealing, however, according to Manu, the guilt of a śudra is the smallest and higher the varna, the greater is the crime in theft. The habit of stealing is thought to be very common among śudras.

Manu lays down laws and punishments for adultery to guard people of all varnas from indulging in such malicious acts. His law does not discriminate so much against śudra woman as against śudra men. Although most of the other law givers lay down laws relating to adultery to preserve the purity of the brāhmaṇa by preventing moral lapses on his part, Manu also protects the purity of the śudra woman. This is in keeping with the principle that women of all four varnas should be protected. According to Manu if a brāhmaṇa approaches unguarded woman of the three lower varnas, he shall be fined 500 panas; for a similar crime against a woman, the fine shall be raised to a thousand panas. Fine amounts to the same for a ksatriya or a vaisya if he has intercourse with a guarded śudra woman. If a brāhmaṇa spends a night dallying with a vrsati, he expiates his sin by subsisting on alms and daily muttering of sacred texts for three years. Punishment for a

41. Manu XI. 67 42. Ibid. VIII 337-38
43. Manu Smṛti VIII. 369 44. Ibid. VIII. 385
45. Ibid. VIII. 383 46. Ibid. XI. 179
A sudra male adulterer is the most severe one. If the intercourse is done with an unguarded woman of the twice-born he shall lose part offending and property; if the case of such an offence is against a guarded woman, he shall lose everything excepting his life. Here the term twice-born refers only to the brahmana as there are different rules for ksatriya and vaisya offenders against a brahmana woman. If a member of any of these two varnas offend against a guarded brahmāṇī who is the wife of an eminent brahmana he shall be punished like a sudra or be burnt in a fire of dry grass. It is worth mentioning here that Kautilya provides the punishment of death by burning only for the sudra offender although Vasistha provides similar punishments for ksatriya and vaisya offenders as well. Manu too maintains that a sudra should be punished to death in such cases. We have every reason to believe this provision of Manu, effective as the death punishment for the sudra adulterer is largely confirmed by other sources.

**Phase of Transformation:**

In the lawbook provided by Yājnavalkya the extremist measures provided by Manu against the sudras is ignored and punishments like banishment were prescribed even for the brahmans. Nārada repeats the severe corporal punishments against sudras offending against brahmans. Brhaspati however states that a sudra should not be subjected to pecuniary punishments but beating, chaining and ridicule should be punishments for them.

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47. Ibid. VIII. 374
49. Ibid. VIII. 377
51. Vāśī, Smṛti XI. 2.3
53. Yāj. Smṛti II.270
55. Ibid. IX.20

48. Manu Smṛti VIII. 375-76
50. As. IV.13
52. Manu Smṛti VIII. 369
Brhaspati in his scale of punishments makes no provision for corporal punishment for sudras abusing vaisyas, ksatriyas and brāhmanas. Yajnavalkya too accepts the principle of varna legislation, but does not repeat the Draconian measures of Manu against sudras. The provision which he states regarding assault shows no trace of varna distinctions. He holds that, if both parties threaten with arms, the punishment shall be the same to all. But if a non-brāhma causes pain to a brāhma, he shall be deprived of his limb. However, it is not clear whether this law is applicable to sudras assaulting brāhmanas.

As for adultery, Visnu provides the highest kind of penalty for connection with a woman of one's own caste, and the second highest with a woman of the lower caste. It is interesting to note that he prescribed the punishment of death for adultery with a woman of lowest castes. However, this is not in conformity with another provision provided by him which says a brāhma guilty of intercourse with a candāla woman for a night can remove his guilt by subsisting upon alms and constantly repeating the gāyātri for three years. An important point to note here is that the law books of this period do not mention the severe punishment prescribed by Manu against a sudra committing adultery with a twice-born woman.

There is no discriminatory scale of compensation for the murder of the members of the four varnas in the law books of this period.
period. However, for the expiation of the sin of murder Visnu introduces a scale of penances which maintains that a person guilty of killing a brāhmaṇa, a ksatriya, vaisya or a sudra should perform the mahavrata penance for 12, 9, 6 and 3 years respectively. No data is available to show the enforcement of such penances but it at least indicates the relative importance of the life of the members of the four varnas. Visnu and Yājnavalkya regard the murder of ksatriya, a vaisya or a sudra as a crime of the fourth grade (upapātaka) and Visnu prescribes cāndrāyana or pātaka penances or makes the person sacrifice a cow if he is guilty of such a murder. Provision such as this places the sudra on an equal footing with the vaisya and ksatriya and gives a special position to the brāhmaṇas.

The old view that the guilt in cases of theft is the highest for brāhmaṇa and that of the lowest for the sudras is again upheld at this period by Manu. This fact is based on the principle that a brāhmaṇa should acquire and practice the full measure of dharma, a ksatriya 9 dharma, a vaisya 9 dharma and a sudra 9 dharma. This perhaps is the principle which is behind the determination of heaviness of lightness of sins for purposes of expiation of each of the four varnas. Katyāyana also prescribed double the punishment of sudras to the ksatriya or a brāhmaṇa in case of theft.

62. Visnu Sārti XXXVI 13, 34; Yāj.II.236
63. Manu VIII 337-338
Brhaspati holds: "He who has forcible intercourse etc.; of this ....... "The penalty should be inflicted on him for (intercourse with) a woman equal (in varna); with one of an inferior varna however half of that; but a man who has intercourse with a woman of a higher varna, should be put to death. It is understood that the offence being of the man only, the statement of the penalty is for him only. Thus here too the woman escapes from any kind of punishment.

This discussion clearly shows the position that was allotted to the śudras. The position of the śudras was relegated to be the lowest in consideration of the twice born classes. It seems probable that towards the latter period the people of Aryan descent also came to be included among the śudras. The invaders such as Saka, Hūna etc. were regarded as mlecchas but we mark gradual absorption of these classes into the general aryan fold with allotment of proper places to them.

Dwellers of hills and forest:

As to those whose dwell in forests and hills no clear reference can be found. It may be assumed, however, that some of them if not all were brought within the wide ambit of the term śudra. These people were also looked down as that of the śudras. They did not enjoy any honoured place in the society and this was because of the fact that they were defeated by the Aryan invaders and so they were forced to serve their masters namely the Aryans. They were regarded as 'mlecchas' or untouchables and the punishment accorded to them is the heaviest.

64. Brhaspati Smrti XXIII.10
Position of women:

Though the women came to obtain a very high place in the Vedic society yet the same position was not given to them in the smṛti period. It is held that women should not be made independent but must be kept protected by their men, day and night. The smṛtis seem to have taken a very low view of the effects of leaving women free. Nārada holds that freedom ruins women. It was the attitude of the thinkers of the period that the nature of women is always fickle and they have a nature of getting lost in sensual pleasure. So it is said that they should always be well protected and guarded. Yājñavalkya holds that punishments should be given to women also specially when there is intercourse as a result of mutual attraction. Brhaspati lays down: "When a woman comes to a man's house and excites his concupiscence by touching him or the like acts, she shall be punished; half of her punishment shall be inflicted on the man". Manu holds that punishment will vary in consideration of presence of passions and infatuation.

It is the duty of the king to see that the husband and the wife live Righteously following their respective duties as indicated by true dharma and they should be punished if they violate the duties prescribed by śāstras. It may be noted that adultery and sex offences are deemed more heinous in dharma śāstras than in the modern criminal law.

Manu ordains: "A non-brāhmaṇa who commits adultery with
a brāhmaṇa woman may be sentenced to a penalty amounting to death (prānāntam). Madhātithi holds that this interdiction holds good in cases of adultery, whether anuloma or pratiloma i.e. with a woman of lower varna or the reverse because it is believed that for social security, wives must be protected from taints, even more than life and property irrespective of castes. Again when a woman is poluted, then also she is retained by her husband and society after she undergoes the necessary penances.

The solidarity of society depends on the purity of blood in the family forming such a society. There is no interference among the different classes in the case of marriage.

**Duties and functions of kings:**

The main function of the king is to assert its power through be(a) declaring certain acts and omissions to be punishable; (b) fixing the penalties for such acts or omissions and (c) conviuting and punishing the offender. It is noteworthy that the role assigned to a king also consists of maintenance of normal order as well as of the social order. The king no doubt, took cognizance of the need for compensating the injured party, but it also insisted that the purpose of the king should be to put the wrongdoer back on the right track so as to correct and reform him, to make him penitent and purge him of the sin incurred by his wrong conduct.

It is held that the central idea in Hindu criminal law is to cause alarm to the people but it is to be meted out by the king for the preservation of social order as it is conceived by the hindu law givers. For that the king takes into account not only the objective circumstances of the offence but also the

69. Manu Smrti VIII. 359
subjective limitations of the offender. The Hindu law givers sincerely believe that the offenders are not a class by themselves but they also have the good qualities in them. But the good qualities are shrouded by the propensities or impediments such as anger, hatred etc. for the time being. They can be brought to the right path by meting out proper punishment. The criminals should be given a chance to rectify themselves and for that view of the matter the punishments should be so awarded that the criminal gets a proper chance to rectify himself. Hence the corrective type of punishment is much preferred by all the Hindu law givers and they all are in unison in holding that the main purpose of the king is to put back the wrongdoer in the right path and to correct and reform him so that he may enjoy his proper place in the society.

The king in meting out punishment has to take into account his responsibility towards the upliftment of the society. So he gives out punishment in such a way so as to deter the individual from further commission of the crime. So the first offence is generally treated mildly and the offender’s punishment should be less than the prescribed amount. If the offender does not show any discontinuance of his criminal practices after such curative treatment, he should be severally dealt with. In such cases, not attenuation but severity of punishment should be the proper remedy to root out his criminal propensities.
Jurisdiction of Parsad in matters of danda:

As is discussed above, the main duty of parsad consisting of the learned brahmana was to advise the sinner about the proper prayascitta that he had to undergo and when the parsad so approached and knowing the proper prayascitta did not direct them through the proper way, they (the parsad) themselves incurred sins. But the question arises as to what role the parsad played with regard to punishment awarded by the king. Do they had any saying in question of punishment? After a careful perusal of the smrti texts it can be seen that the brahmanas helped the king in the administration of justice by being judges and by advising him as to the punishments to be imposed. Manu says: "when desirous of dealing with vyavahara, the king shall in humility enter the sabha with brahmins and with ministers who are skilled in counsel". It is thus apparent that the king did not administer justice all by himself. It seems the Hindu Dharma Sastras followed the established principle that justice should never be administered by a single individual by himself. The king is always aided by council of ministers, Brahmans and Purohit in meting out justice so from all these it can safely be deduced that parsad and sabha played an important role in meting out punishment to the offender, so much so, that they were assessors of a king or the council of ministers of a king.

70. Visnu dh. S.V.194 71. Manu Smrti VIII.1
Economic Background:

The smrti literatures invariably prescribe harsh punishments for the heinous sins at first instance. Nevertheless, we find some kind of remissions as well prescribing fines for committing heinous sins in the nature of monitory as well as giving away cows also. It is pertinent to note that giving away of cows has a special significance attached to it. In general cases and conditions it is gold or currency which should be deposited as fines. But the Hindu society being truly an agricultural society much importance has been placed at giving away cows. Apart from that, the cows in that period had a religious importance as well. The Hindus, in some cases, worship cows and even sometimes it is regarded as with mother also. It is probably for this reason that the Hindus specially prescribe giving away of cows as donation and fines, which fact goes to prove that the Hindu society was necessarily an agricultural society. Rules of punishment prescribed for destroying paddy, vegetables etc. also proves the same fact. In this regard, projection of trees etc. are also to be noted, inasmuch as definite rules of penance and punishments are laid down in the smriti sastras for destroying trees etc.

Medium of exchange was currency such as māsa, kārsāpana etc. As we have noted above, giving away of cow as medium of exchange was replaced by currency as is clear from the fact that though donation of cows has been prescribed for different offences yet the criminal can do away the fine with the help of currency equal in amount to that of a cow (dhemumulya). So in all probability
giving of currency as fine replaced giving away of cows in the smṛti period only.

In the different sūtra literatures such as Bandhayana dharma sūtra, Gautama dharma sūtra, a person is debarred from making a sea voyage and definite rules of penance have been laid down for one who takes a sea-voyage. This seems to be a check to trade and commerce. The smṛtikaras, who have laid down much emphasis on the varna-srama system and who have prescribed different varieties of works for different groups, did not insist on universal adherence to strict rule, particularly when the vaisyās were been assigned with the labour of trade and commerce. The vaisyās, in furtherance of trade and commerce, had have to make sea voyages and putting such restrictions so as to prevent them from making sea voyages will only lead to obstruction to trade and commerce. So it is more probable that the Brahmins, who were supposed to engage themselves in learning and teaching, were debarred from making sea voyages and the rules of penances for making sea voyages applied only to the brahmins. Furthermore, different rules of penance and punishment show that decentralisation of economic activities were encouraged and heavy machinery was discouraged in all respect, the cottage industry being the mainstay of the society.

A general study of Manu's code will certainly point out that the rules laid down in the code are much more harsh than the period preceding it. It is marked with orthodoxy. The most widely accepted argument in favour of this is that during the
period of Manu, the Buddhist religion had been able to capture a wide ground and had a clear edge over the Hindu religion. In order to reestablish the Hindu religion he was forced to become rigid and strict and consequently the rules of Manu are harsh. This argument gains ground from the following facts; - the heretics i.e. the Buddhists and the Jainas, were to be banished from the capital and were as bad as the thieves. Further he says: all those traditions (smrtis) and all those despicable systems of philosophy which are not based on the veda, produced no reward after death; the they are declared to be founded on darkness. All those doctrines which spring up from nonvedic sources are worthless and false, they being of modern date. But with the change of time, we do not observe such orthodoxy. Even the texts of Yajnavalkya puts forward somewhat milder conceptions. If we go through the different rules and regulations as found in the different smrtis it would be crystal clear that the change of social context and structure brings forth change of values and conceptions. For example, Manu’s punishments are inordinately severe. Death is a general sanction. For adultery in defiance of the husband, the woman is to be torn to pieces by dogs and the adulterer is to be roasted and consumed slowly on an iron bed by putting logs of wood underneath it. These severe laws find no place in Yajnavalkya. This point is especially marked out by the remissions and omissions found in the history of the two institutions i.e. prayascitta and danda.

72. Manu Smrti IX.225-226  73. Ibid. XII. 95-96
74. Ibid. VIII. 372.
The severity of the penal law of Manu differs largely with that of criminal law as propounded by Yajñavalkya. In the period of Yajñavalkya we observe a lenient tendency. Punishments at this age are milder and offences have been treated as less serious. On the other hand, a number of new offences are added in Yajñavalkya. This necessarily marks a higher stage in differentiation and a more developed legal perception. The immediate cause of Manu being so strict in the rules and regulations is the spread of Buddhism. Manu had to cope with the spread of Buddhism, which was gaining ground at that point of time and consequently he had to formulate very strict rules so as to keep the society under strict observance.

The importance and significance of change of place, age, time, geography and history in the activities and behaviour of man has been duly recognised by the Hindu thinkers. According to the condition demands and exigencies of the time and place (desa-kāla), the rule that was prevalent at an earlier period changed and assumed some other form in the latter period.

Another notable feature that attracts attention is that the smrti literatures invariably prescribe some kind of severe punishment at the first instance but some kind of remissions are also prescribed in the next instance.

There are ample references of this sort of remission and omissions in the dharma sastras. The Hindu jurists properly understood that law is made for man and not man for law. The
remissions and the concessions mark out the fact that the society was lenient. They sincerely believed that the aim of criminal law should be to reform the criminal. Kindness showered to the animals and trees point out the fact that Hindu society was never inhuman and cruel, as alleged by some of the Western thinkers.

The Hindu thinkers truly understood that a living society must have both the power of continuity and the power of change and they, therefore, evolved the rules for essential changes. It was propagated in the period that there must be no violent break with social heredity and yet the new stresses, conflicts and confusions will have to be faced and overcome with the rules changing from time to time. 75 Hindu legislators recognised that society is a slow growth and institutions and dogmas which lose the stuff of life must be scrapped. Laws are made and unmade according to requirements of time and social changes. The rulers who administered the law with the assistance of Pandits anticipated the needs of the society and made changes. Thus it can safely be asserted that social flexibility has been the chief character of Hindu Dharma.

75. Manu Smrti I.86; Para Smrti. I.33.