Panda - Its theory and principles.

Certain acts which are regarded as undesirable are defined by political society as crimes. A crime is generally held as an act or commission that breaks the law and is subject to public censure i.e. punishment. Thus those actions are crimes which are deemed to be menaces to the condition necessary for the smooth running of the social machinery. These actions are preventable in an organised society by enforcing certain laws promulgated by the king or the legislature as the case may be. The criminal law is defined conventionally as a body of specific rules regarding human conduct which has been promulgated by a political authority. The criminal law applies to all members in the society in varying degrees. These rules are enforced by punishment administered by the king or by persons authorised by the State.

Conception of Crime

The utility and necessity of punishment has been categorically emphasized in the dharma śāstras. The term 'danda' meaning 'stick' is said to be derived from the root 'dam' to retain, restrain (Damanārtham dandah). The principal duty of a good ruler thus appears to be to subjugate people by punishment and the ruler for that reason is perhaps called the 'dandadhara' i.e. the power or wielder of punishment as is called an incarnation of Dharma or Yama, the judge of souls.

The modern criminology makes a distinction between crime
and tort. It believes that a crime is an offence against the state, while offence against an individual constitutes a tort in violation of civil law. But the classical theory expounded in the dharmaśāstras believes that criminal law is blended with tort for it regards crime as originating in torts or wrongs done to individuals. When a crime is committed, the injured person may claim a damage suffered by him. Ṛpastamba and Bāmdhāyana clearly lay down that when a ksatriya is killed, the damage to be paid is donation of thousand cows whereas in the case of a Vaiśya victim it is hundred only and in the case of a śūdra it is only ten.¹ There are many examples of this sort which form the basis of Maine's conclusion that India never had any criminal law.² But as a matter of fact danda is connected mostly with the state or the ruler and its aim is not to collect or redress damage for the injured person but to punish the criminal. However, it is an admitted fact that all wrongs produce a strong desire for self-redress in the minds of the injured persons and therefore are treated as injuries to particular individuals. Then only the group takes charge of the treatment and the wrongs come to be treated as injuries to the group or the state. These transitions include an urge of injured party to take revenge on the wrong-doer which might lead to some more bloodshed and thereby causing prolonged enmity. The person wronged feels a great urge for revenge and his fellow-men sympathise with him and help nurture

¹. Āpa dha 3.1.24.1-4; Bāmdh.3.1.10.19.1.11
². Maine 'Ancient Law' Ch.10 p.307
his feeling of retribution; hence there is the necessity of punishment. The state thus considers such wrong doing as offences against itself and offers punishment.

Sir Henry Maine Says: "The penal law of ancient communities is not the crimes, it is the law of wrongs, or to use the English technical word, of torts. The person injured proceeds against the wrong-doer by an ordinary civil action, and recovers compensation in the shape of money - damages if he succeeds."¹ In illustrating this thesis, he points out that under the Roman Law offences which we are accustomed to regard exclusively as crimes are exclusively treated as torts, and not theft only, but assault and violent robbery also are associated with trespass, libel and slander, and all are requited by a payment of money; he also shows that the old Germanic Law is similar to Roman Law in character and provided money compensation even for homicide. In the Hindu Law punishment of fine occupies a more prominent position than compensation for wrongs and the mere payment of compensation to the individual is injured, when the injury inflicted/at all serious and its character, is seldom regarded as sufficient to meet the ends of justice. It may therefore, be safely concluded that the penal law of the Hindus is the law of crimes in the strict sense, and the law of torts occupies a comparatively subordinate and less important position in the system.

¹. Maine, Ancient Law. Ch. X. P. 370
Classification of crime

The division made by Gautama into two heads viz. deyanibandhana and daṇḍanibandhana does not exactly correspond to the division of law into civil and criminal. Such a division has been made for the first time by Brhaspati - dhanodbhavāni and himsodhavāni. According to him the latter consists of real and verbal injury, violence and adultery. Gautama divides daṇḍanibandhana into dhanamūla and himsāmūla i.e. crime arising from covetousness and hatred.

Manu divides crimes into real and verbal injuries, theft, violence and sexual crimes. In Nārada the law of punishment consists of violence or grave crimes (sāhasa), real and verbal injuries and these three titles are subdivided into fifteen sections. A quotation from Nārada enumerates the ten chief crimes (dasaparādha) as follows:

Violation of a royal command, murder of a woman, mixing of castes, adultery, theft, pregnancy as a result of criminal intercourse, verbal injury, gross abuse, real injury and abortion of foetus.

Enumeration of different kinds of crimes:

Vākparusya (defamation): The term which has been used by modern writers on Hindu Law as 'defamation' is vākparusya, which literally means force used through language, or assult by language. According to Manu that is tantamount to defamation when one talks

4. Brhas Smrti II.5-10
with arrogance belittling of a person, the learning (śrāvita), country and birth (nationality). Further, when an one eyed man or a khañja (lame) and such others with defects are taunted for their physical defects that also amounts to defamation. 5 Yājñavalkya defines that vākparusya is that when one vilifies another as having a defective limb or a defective organ or as suffering from a vile disease (leprosy). 6

Nārada, on the other hand, defines vākparusya as that kind of slander which underestimates a man or his country, or caste and such slander is the cause of mental upsetting of a person. 7 Brhaspati also lends support to this view. Vilifying the abuser's mother or sister is the offence belonging to second degree of defamation. Ascription of minor sins as well belongs to this category. On the other hand defaming one with heinous sin, uneatable or mercilessly exposing a particular traitor, point of a person who is most touchy about it belongs to the highest category of defamation.

It is to be noted that the harshness of the utterances must be evident. Further the harsh expressions may be coupled with reproaches. The gradation is designed to indicate the gravity of the offence and corresponding severe punishments. 8

Defamation consists of as Kautilya defines - "Vākparusya-mpavādah kutsanāmbhi-bhartsanāmīti" - (a) slander (apavāda), (b) contemptuous talk (kutsanā) or (c) intimidation (abhībhart-

5. Manu Smṛti VIII. 273-274
6. Yāj. Smṛti II. 204
7. Nār Smṛti XVIII.1
8. Ibid XVIII. 2-3
Kautsilya treats the vakparusya offences after sahasa with which he begins the law of crime, while Manu and Yajnavalkya begin the subject with vakparusya.

The definition of Kautsilya suggests that the slander (apavada) may be of (a) the body (sarira), (b) temperament (prakrti), (c) learning (sruta), (d) occupation (vrtti) or (e) country (janapada) of a person. It seems Yajnavalkya regards true or untrue slander as equally blameworthy. However, the untrue slander is less serious than the true one. Manu also believes that both of them are equally blameworthy.

Danda-parusya:

The term dandaparusya itself suggests that the offence consists of severe hurts, inflicted with the means of wood, brickbat, iron etc. or other dangerous agencies as rope, which may not cause an open wound, mutilation or injuries causing death. Yajnavalkya clearly lays down that even throwing of ashes, clay or dust belongs to this category of offence though of minor nature. Narada lays down that injuring the limbs of another with the hand, foot, weapon or other means such as stones etc. amounts to dandaparusya. Brhaspati, on the other hand confuses us when he says that the man who return an abuse or a blow is not guilty. But it seems that all he wants to mean is that he is not equally guilty like the person who begins the abuse or the blow i.e. who starts the fray.

9. Kau Artha Sàs Ch. 75. p. 193
10. Yaj Smrti II. 204
11. Artha Sàs III.19 (dandaparuyam sparsanamabgürnam prahatamiti)
12. Yaj. Smrti II. 213
13. Nar Smrti XVIII.4
Gravity of the crime is measured by the abusive treatment involved and the penalty to be imposed is estimated accordingly. Kicking being a more serious form of attack than hitting with hand and will bear a heavier penalty than the latter. Punishment in cases of grievous hurt follows a thorough investigation according to the nature and seriousness of the hurt caused. If the injury is a serious one the assailant will not only pay a sum of money as fine but will also bear the cost of medical treatment of the person injured. If an attack is made by several persons, the punishment imposed on each one of them would be of the same quantity as for a single person on a similar attack.

This category of crime includes an assault caused by tying up a person with a cloth. A theft of assault is also punishable, though not as severely as real physical assault. In cases of mutual assault, the punishment is more severe for the person who is found to have begun the assault. The motive of the assault is an important factor to be considered in deciding the penalty.\footnote{14} Assault on the person of a king, whatever his behaviour may be, will be punished by the offender being burnt alive, tied to a stake.

Besides, Manu, Yājñavalkya and Kautilya unanimously bring trees and plants under the protection of law.\footnote{15} Injury to them is considered to be an assault. Manu firmly believes that member of the vegetable world should not be pained (himsā). One

\footnote{14. Manu Smṛti VIII. 286; Kṛtya 489} \footnote{15. Ibid VIII. 285 \textsuperscript{} ; Yāj. Smṛti II.227-229}
inflicting pain on them is to be punished according to the position of the injurer. Yajnavalkya lays down that cutting branches is 
a cruelty to the limbs of the trees. Cruelty to animals is likewise treated in the law of assault in both Manu and Yajnavalkya. Dandaparusya being a common offence it was gradually extended. The clear sign of it is traceable in Manu and Yajnavalkya. It is extended constructively to the injuries done by one's animals to men. Men driving animals under a vehicle, came under the law of assault if they cause injury to the public on the road.  

Road accidents that happen through breakage of wheels or yokes of carts or of the nose strings of animals do not make the owner and driver responsible for them. But if the injury is due to the driver's fault the owner of the cart is liable. If the cart kills a man, the driver will be punished like a thief.

Injury to one's residence in kalaha (quarrel) was taken to be equivalent to injury to the owner himself. His sacred right of ownership is disregarded and the owner felt insulted. The mischief, though not on his person, falls on his mind by violation of dharma and as force is openly used, it amounts to insult, all the elements being present. Mental pain is an element in Hindu Law of assault.

16. Yaj Smrti II. 227
17. Manu Smrti VIII. 291-295; Yaj Smrti II. 298-299
18. Ibid VIII. 292; Krtya Kalpa 500
As in modern law there is however provision for self-defence in Hindu Law; but it cannot exceed the reasonable limits. If a person uses a deadly weapon when assaulted he will be punished according to the effects of his reprisal though many would consider it to be self-defence. Right of private defence against attack is admitted by smrtis even to the extent of killing the assailant if otherwise the defender would have been killed. But a brahmana assailant with murderous intent is an exception to it. Sumantal says that for killing an atatayin there is no guilt excepting when it is a cow or a brahmin; when killed any of these two there shall be punishment. Katyayana also is of the opinion that when one is coming with the intention to destroy, one should have no hesitation to kill. Likewise, whenever guilt for killing the atatayin is stated to be absent the assassins who would otherwise be linked with killing should be made free from penalty.

Discipline and assault:

Chastisement is permissible as discipline but it must not be excessive. Manu lays down that when a wife, a younger brother, or a son or a slave has committed faults he or she may be chastised by being beaten by the head of the family using a light bamboo or rope.

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19. Apara on Yaj. III. 227
20. Manu Smrti VIII 299-300
Investigation of assaults:

If no witness are present when a person is assaulted, as when it takes place within a house or in a lonely place, the guilt cannot be determined by the marks only of injury, as such marks might be self made or fake. In the absence of good circumstantial evidence or witness, recourse must be to ordeals.  

Even in defence against attack one must not exceed reasonable limits. A similar principle is behind the dictum that the man who strikes an assailant with a deadly weapon and injures or kills him is punishable by the king.

The crime dandaśāparusya depends on the question of caste and sex also. If the accused belongs to an inferior varṇa as Mleccha, servant etc. his crime will be more serious in nature than that of the others. In deciding the nature of the crime the question to whom the crime is committed is also marked out. If the crime is committed against a Brāhmaṇa or a woman it is in excusable.

Steya (theft):

Steya in the Rgveda has been regarded as a major crime along with sāhāsa. Nevertheless steya must be clearly distinguished from sahāsa. Sāhāsa comprehends many offences in all of which the use of force or threat of the use of force is an essential element, whereas the in theft (steya) there is no use of force or threat of using it. It consists in depriving a man of

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22. Krtyakalpa p.495  
22. Manu Smṛti VIII.332; Nār Smṛti XVII.12  
23. Nār Smṛti XVII.17
movable property without his consent by deceit, trick or when he is asleep. Theft is one of the great sins and has attracted the attention of all classes of jurists. The king if he fails to protect property is not true to the oath taken at the time of coronation. The theft is defined as seizing of property stealthily.

Yājñavalkya lays down that theft may be of three types (a) trivial or trifling articles (kṣudra dravya) (earthen vessel etc.); (b) ordinary ones (madhyadravya - clothes etc.) and (c) valuable ones (mahādravya - gold etc.). Manu divides thieves into two varieties - (a) Prakāśa vaucaka and (b) aprakāśa vaucaka or praupancha vaucaka. Merchants are prakāsa vaucaka because they employ false weights and thus cheat a man on his very face. Doctors (vaidya) may purposely aggravate the disease to induce the patient to give them more money. Secret appropriation of the properties of persons asleep or fuddled with drink or suffering from mental dementra is also theft.

Theft, as we have mentioned above may be committed through different ways. Accessors who are to help the judge may give wrong advice through greed for money. A partner may deceive his co-partners. A merchant may sell off goods after concealing their defects or after mixing good and bad ones or can sell old articles after repairing them so as to make them look new.

Consequently it would be inferred that in Hindu Law theft was extended to cover deceit as well. The śrūtis clearly point out that theft is taking away property not openly but through fraud. If loss of property is caused by trick or deceit, it is theft. At the same time, Manu lays down that kidnapping of man and women also comes under theft. But where the intention of theft is absent, it is not theft.

On the other hand, Yājñavalkya makes many new cases of constructive theft - selling goods with defects undisclosed, a thing sold and not delivered by the vendor, combination or blending by tradesmen to raise prices and to cause loss to the public and the state, substitution in a sealed deposit, representing articles for sale to be superior to what they are. All these offences had been treated by Kautilya under the heading 'miscellaneous'. In his opinion they do not constitute proper theft.

Yājñavalkya believes that it is not always a necessary factor to arrest a person on a charge of theft only when he is found in possession of stolen property. To him a person may be arrested even on suspicion and also he who has been previously convicted for theft. He observes, "Some others may be arrested who do not give out their name or caste; those who are addicted to gambling, women and drinking, whose mouth dries up and voice

27. Ibid VIII 323  
stutters or falters on being questioned; persons who enquire without any apparent cause about another's property and house; those who secretly move about; those who are lavish in their expenditure, without having any source of income and those who sell broken articles. "If the person arrested on suspicion cannot establish his innocence, the king shall compel him to return (or compensate) the stolen article, and punish him like a thief."²⁹

There are two types of theft as Manu points out - open and secret.³⁰ The essence of the offence is the removal of property. The different types of cheating are classed as open. The difference seems to lie in the context of the time of the operation. Burglars, robbers in forest, house breakers, cut purses (pick pockets), stealers of cattle (cattle lifters) and stealers or abductors of women are classed as secret for most of them are committed at night. On the other hand, open thefts are committed in ordinary transaction. But in reality they are not so open as is implied by the term 'prakāśa'. For eg. the use of false weights and measures or scales that do not weigh correctly, who cheat in counting - these are included in 'prakāśa'. Prakāśa, however, is analogous to that of a theft, since in both cases the loss falls on articles or their values in money. There are obvious thieves and virtual thieves. Roguery is described as theft.

²⁹. Yāj. Smṛti 267-269
³⁰. Manu Smṛti IX. 256
Sāhāsa (Robbery):

We have dealt with the meaning of sahāsa in the foregoing pages while discussing theft. Here we propose to make only a brief study of it. Kauṭilya defines sahāsa as 'an act of force in sight of defenders'. Nārada defines it as 'an injury coupled with force'. The act of force may be directed to person or property. Sāhāsa includes all heinous offences incurring violence such as homicide, rape, robbery, dacoity, mischief etc. The province of sahāsa overlaps with that of steyā vākparusya, đanda parusya, strīsamgrahana but as violence was an additional circumstance in it, it is separately treated in order to lay down heaviour punishments for the offences included in it.

Further Manu lays down that any man of the three higher castes may take up arms when there is hindrance to dharma or in self defence or for protecting women, brāhmaṇas and that, if he kills anyone in such a case he incurs no guilt. The next verse too says that one may kill an ātataśī, whether he is one's guru, or a child, or an old man or a learned brāhmaṇa. This of course, does not contain a vidhi that a guru and other may be killed, but they convey that even gurus who are to be highly honoured or even children or old men who are both objects of compassion may have to be killed. So the others who approach as ātataśīs can be killed without any hesitation. Mitāksara commenting on Yajnavalkya voices out the same fact.

31. Nār Smrti XIV. 12  32. Mit on Yaj Smrti II. 230
33. Manu Smṛti VIII 348-49  34 Mit on Yaj Smrti II. 21
is of the opinion that an ātātāyin Brāhmaṇa is to be killed only when he is about to kill another or is in the act of killing but not afterwards, and that, when it is possible to ward him off by a mere blow (i.e. without actually killing him). A man will incur sin of Brahmahatyā, if he kills an ātātāyin Brāhmaṇa. 35 says Vyāsa.

Śrī-Śamgrahaṇa (adultery):

Śrī-śamgrahaṇa literally means "seizing women to oneself", which covers both rape and adultery. It ought to be rendered as "offences regarding women". Śrī-śamgrahaṇa has been regarded as one of the heinous sins from the earliest times. Various penances and penalties are devised with reference to various degrees of the gravity of the offence.

Brhaspati defines "when one has intercourse with a woman in secret, against her will, while in sleep, or during the mental derangement or violent insanity and while she was praying (widely) it is termed forcible enjoyment of a woman". 36

It is viewed as a very grave offence as it involves not only a moral fall but may lead to a mixture of blood between varnas in a normal (anuloma) or abnormal (pratiloma) order. A king's fame is enhanced by prevention of such acts.

The woman with whom adultery may be committed may be of different classes who are classed as protected (guptā) and non-protected (aguptā), virgins and non-virgins, prostitutes.

35. Aparāraka on Yāj Smṛti III 227
36. Brhas Smṛti XXIII.3
and kept mistress, women who make a living by prostitution of their women eg. minstrels and actors. Unnatural sex relation is possible between men and men and women and women as well as unnatural ways of sex-union and such acts are punishable.

Kinds of adultery:

Adultery, says Brhaspati has its root in sin (papamulam) and it is of three sorts viz. brought about by force, deception or sensual desire. The first is rape and is committed on an unwilling woman who cries for help or one who lies asleep or drunk or unconscious. Rape is a more heinous offence, which is committed without the intention of the other party. In the nibandhas, rape is considered as an offence under the sahasa group. In the offence of rape the woman does not become a party of it. So she is excluded from punishment but she does incur a sin for which prayascitta is prescribed. The second is when a woman is led to a man's house by false pretexts and made to have intercourse with him; or after a good deal of flirtation, the details of which are described, the woman yields to her sensual desire, which has been stimulated. Meeting a woman in a solitary place and casting amorous glances at her are deemed by Vyasa as adultery of the first sort. This observation of Vyasa is also ment with in the Bible where in the famous sermon on the mount Jesus Christ exhorts his disciples in the following words:

"Ye have heard that it was said by them of old time, Thou shalt

37. Manu Smriti VIII 359; Yaj. Smriti II.286,294; Nar Smrti XV.70
38. Br. quoted by Apara p.854; Krtya 577
not commit adultery. But I say unto you, that whosoever looketh on a woman to lust after her hath committed adultery with her already in his heart”.

The next step is sending a woman garlands, perfumes, cosmetics, ornaments and clothes as gifts, which she accepts. This may lead to greater familiarity and end in adultery - it is of the second degree. Sitting on the same bed, embracing, dallying and touching one another in forbidden places on the body constitute the highest degree of adultery as it must end in sex intercourse. A man who has come to this stage may, if discovered, be arrested for adultery, even though the intercourse has not taken place.

A man who has been convicted of the offence once before will be convicted again even if he is found conversing with a woman. A go-between, i.e. a pander or pimp should be punished like an adulterer. It is not adultery if a woman of her own accord approaches a man and if wives of men who are impotent or neglect their wives favouring other women come to a man of their own accord, he is not a criminal. Manu denounces adultery as likely to lead to confusion of castes and exhorts kings to stop it by stringent penalties.

Samvarta as quoted in Vaiś. Cintāmani holds: “Hear now those signs (which are visible) when sexual intercourse has been forcibly made with unwilling women. Emaciated by the tears of the nail and

39. Viva Ratna p.381
teeth, broken by the catching of the hair, a woman forcibly despoiled and ravaged recently, crying loudly and wailing in the presence of the people pronouncing him by name, when she bemoans with signs of these kinds, with the breasts turned down and with broken ornaments and hair and with troubled eyes, should be taken by the King to the court along with the assessors and having investigated himself at that very moment, what words she utters in a natural way, that should be decided with effort. In such a trial no witness should be admitted and at the request of the accused he should not be admitted to an ordeal".

The offence of stri-samgrahaṇa includes unauthorized talking with women, sending of presents of flowers etc. to them, touching their clothes or person by a stranger. Offence of force is presumed to be absent, when the complainant is a woman of the town.

**Dyūta - (Gambling):**

The offence of gambling dates back even to the Vedic period. In the Rgveda a picture of a gambler crying over his sad fate and lost fortune has been drawn. In Vājasaneyi Samhitā we get “Aksarājāya kitabam”. In the Vedas it is regarded as a major crime but by the time of smṛti period it has come down to be a minor crime only.

The difference between 'dyūta' and Samāhvaya is that the first is carried on with inanimate objects (like dice) and the

40. Vya Cintāmanī
41. Rgveda I.41.9
latter with animate objects (such as cocks, pigeons, buffaloes etc.). Those who gamble as well as their instigators incur sin of the same degree. The citizen who connects himself with this offence is a menace to the country itself. 42 So a person should not resort to such vice even for mental satisfaction, for this kind of offence gives rise to a sense of hostility among the individuals. Thus the attitude of Manu towards gambling is most uncompromising. But later writers like Yājñavalkya allow gambling when under the supervision of royal officers. This is done specially because the keeping of gambling houses help in detecting thieves.

Gambling and betting:

According to Manu dyūta is artful playing with dice etc. whereas betting consists in sporting with birds and other animals. 43 What is done through inanimate things is gambling and with animate betting. Ivory strips, lead, dice kuhaka seeds are the instruments of gambling. In betting rams, bulls or other animals like cocks are made to fight and wagers are laid on the results of the fight. Prize fighting and wrestling are also included under betting (samāhvaya). Both and especially gambling, have been regarded as reprehensible practice and people who become addicted to them will not easily give up the practices.

Manu's attitude to gambling is hostile. He describes it as 'open theft', which by its spread, causes the ruin of kingdoms and of princes who became addicted to gambling. 44 He exhorts

43. Ibid IX 223 44. Ibid IX 222
the king to put down both. Commentators have explained the prohibition with regard to only unlicensed, unsupervised, and unauthorised gambling. It was

Relativity of Crime and Punishment:

Manu maintains that in all matters of justice, the various factors entering into the situation should be taken into consideration. Time, place, circumstances, the heredity of the individual who commits the crime - these and other factors should be duly considered. A crime must not be judged on the basis priori legal assumptions.

Punishment as we have noted above, depends on the psychological make-up of the individual. The person higher in varna has special responsibility than the one who is lower to him. It is thus natural that the Brāhmaṇa who is a model for men of the world to follow, should pay heavily for his crime.

A logical attitude is evinced in the doctrine of legal punishment in some matters which in the case of the merchant (vaisya) class should be double than that of a śudra; twice as heavy again in the case of a ruling class (ksatriya), and fourtimes as heavy in the case of the priestly class in respect of the same offence. This fact proves that the law givers of ancient India realised the justice of the principle that social responsibility rises with intelligence, education and status.

From an intimate study of the dharma sastras one feels that the Hindu Law insists more on the duty-aspect of the situation rather than on the right of the other party. Thus the main role
assigned to the king in the maintenance of the moral order as well as to the social order and it may be one of the reasons which insists on the king to put the wrongdoer back on the right path; to correct and reform him, to make him penitent and purge him of the sins arising out of the commission of the wrongful act apart from the need for compensation the injured party.

Dr. P.K. Sen observes that the central idea of Hindu penology was that the punishment for wrongdoing was to be meted out by the king for the preservation of the social order as it was conceived in Ancient India. He further observes that (a) the Hindu theorists of penal law clearly formulated the distinction between civil wrong and crime; (b) that the predominant feature of the crime is its quality of causing alarm to people.

Crime leads to a fall from caste status, and in grave cases it puts a person outside the four varnas as an outcast (patita). Association with an outcast renders a person liable to the same expiation for rehabilitation as the outcast himself. Nevertheless, the criminal should be restored to his social status after he has undergone the necessary punishment. Punishment should not be a vengeance wreaked by society. After the criminal has served his sentence, he should be considered as having been purged of the crime. The society must forgive him, as also the infant, the aged and the sick.

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45. Sen, Penology, Old and New, 89; 46. Ibid. 124
47. Manu Smriti XI. 181; Ibid VIII. 318
Hindu Speculation of danda - Origin:

In a civilized society, a man can never be allowed to take law into his own hands. Some sort of restrictions should always be there to suppress that emotion. Therefore it is the duty of the state or the king to see that the sentiment of revenge or retaliation is satisfied to some degree by the adequate punishment for the wrongdoer. Yājñavalkya and Nārada state that when a person without complaining to the king sets about to secure what is denied by the opposite side or is doubtful he becomes liable to punishment and he also cannot secure the object he wants. So the end sought to be served by punishment is the protection of society and securing of its happiness. That might be the reason for the comparatively humane treatment of the criminals in ancient India as compared to the horrible and revolting methods of punishments meted out to criminals in the West.

Legislation resulted when dharma was no longer followed; institute and the king was created to vyavahāra and wield the danda. Brhaspati repeats the same idea, substituting covetousness (lobha) for envy. Many avers in clear and unambiguous language that a man honest by nature is very rare and hence the need for law. Even the Western political thinkers are conscious of a golden age or Utopian order in the past. But the Matsya-Nyāya age bears the testimony of a degeneration of the morality of the people.

48. Yāj. Smṛti II.16; Nār Smṛti I.46
49. Manu Smṛti VII. 18-24
If hatred, envy and covetousness are at the root of the trouble, the king's duty will not be complete merely in compensating the victim. The Dharma Śāstras emphasize the observance of dharma by every individual. The Sukramiti says 'Dharma is wearing away from wrong conduct; this is achieved by punishment. The means by which a person is thus restrained (from misconduct) is danda'.

It is interesting to note that Gautama places danda and teaching by the Ācārya or preceptor on an equal footing, as reformative or corrective influences. When it is understood that the reformation or correction of the transgressor was as important as punishment punishing him or compensating the victim, the place of penances and expiations in law will become intelligible. The following sutras of Āpastamba, though dealing with Brahmans, clearly reveal the scheme: "If those who have had the śāstric sanskāras fall from the proper standard of conduct by reason of their weakness, the Ācārya will prescribe the appropriate prāyaścitta; if the delinquent does not obey, the matter will be referred to the king who in turn will refer to his purohita versed in the dharmāśāstra and the Arthāśāstra. He will prescribe the punishment (other than corporal punishment and servitude). The culprit if still disobedient or recalcitrant will be subjected to Nāyama (fasting, restraint etc.) according to his capacity till he agrees to perform the expiation."

50. Nibrittirasadharaddamanam dandatachatat
Yena samdamyate janturupayo danda eba saḥ II - Sukramiti
51. Dharmakosā I. 568-569
The urge for the need of coercion (danda) in the preservation of the dharmic order implies a cynical view of human nature and can be traced to Mahābhārata, the Kautilya Arthasastra and the Kāmandakiya Nītisāra, the Manu Smṛti and the Sukranītisāra. All are unanimous in declaring the natural depravity of man. The suspicion about the nature of human being that dominates Hindu thought can be summed up in the words of Manu - "a guiltless man is hard to find. A society with contrains is no society at all; man feed on one another as do the beasts of the jungle and the fish in the sea". 52

Ancient Indian political philosophers and the authors of dharmasastras never had any high opinion of human nature; and that they believed that the ordinary man were so depraved, liable to crime that they could be kept on proper path only by the fear of punishment. Manu plainly states the following in this connection: "the whole race of men is kept in order by punishment for a guiltless man is hard to find; through fear of punishment, indeed, this universe is called to enjoy its blessings." 53

Due to the above reason the aim or outlook of the states in India was to create condition and environments necessary to enable all men to live in peace and happiness, to pursue their avocations, without interference to enjoy the fruits of their labour and the property acquired by them. The task of the state

52. Manu Smṛti VII. 20
53. Manu Smṛti VII. 22; see also Kāmandakiya Nītisāra 3.41-43
was to repress any violations of the rights of personal freedom and property by the use of force and to help in enforcing the practice of peoples own traditional customs and usages with serious care to virtues and dharma.

The Manusmṛti says - "The king has been created (to be) the protector of the castes (varṇa) and orders (āśramas) who, all according to their rank, discharge their several duties".\(^54\)

The object of protection as referred to by Kautilya is as follows:\(^55\) "The people (lāka) consisting of four castes and four orders of religious life, when governed by the king with his sceptre, will keep to their respective paths, even devotedly adhering to their respective duties and occupations".

The ancient Indian concept of punishment viewed as an instrument of protection is of interest to us in the modern times. We can look into it the place of force in the origin of the state; and also as a justification for the maintenance of social good. On the basis of many statements of Manu and Kautilya we can assert that the sceptre of danda is to be used by the king as typifying the state, not for his personal profit but for the furtherance of the social good of all section of the people including the wild tribes and foreigners. In this connection we may well appreciate the statement of Kautilya who, while commenting on danda or punishment observes: "That sceptre on

\(^{54}\) Ibid. VII.35

\(^{55}\) Kautilya Book I. Chap IV.9
which comprised the philosophy of sāṃkhya, yoga and lokāyata),
the triple vedas and vārtā (agriculture, cattle breeding and
trade) depend is known as daṇḍa", and more particularly that
upon which (daṇḍa) the course of the progress of the world
depends".  

Manu says - "If the king did not without tiring, inflict
punishment on those worthy to be punished, the stronger would
roast the weaker like a fish on a spit; the crow would
eat the sacrificial cake and the dog would lick the sacrificial
viands and the lower ones would (usurp the place) the higher
ones".  

The conclusions that may be deduced from the foregoing
lines are as follows: firstly, there existed a society prior
to the formation of the state; secondly, the members of that
society were afraid of the strong coercing the weak, and, thirdly,
in order to protect the latter, the king whose power had a
divine sanctity inflicted punishment compelling the members
of the society to acknowledge his authority. There is another
important factor that should merit notice is that in describing
the king's duty, Yājñavalkya and Nārada use the expression
"Sthāpayetpathi" - 'put him back on the right path' which the
Mītākṣarā interprets as follows: -

having punished (a person) according to the nature of the wrong,
the king must re-establish the person in the performance of
svadharma. Thus restoration or rehabilitation of the criminal in
the society is another duty of the king, which he must diligently
follow.

56. Kauṭilya.4.3  57. Manu Smṛti VII.14; 20.
Danda - A responsibility of the King:

If the king fail to punish those who swerve from the path of duty, there will be chaos and the whole world will be destroyed. Punishment has been depicted as a horror, described as the dark, red-eyed God, the son of the creator under whose mighty rule the world feels itself secure. Punishment protects mankind and keeps watch when mankind sleeps. Its operation is a necessity in order to maintain the law and order of the body politic. The ruler, on the other hand, must be able to enforce his will, in preventing disorder and compelling compliance with the rules imposing duties on everyone. This is said to have been proved by arming the king with the power of inflicting punishment or effecting rectitude. The power of punishment has been personified as an attribute of 'omnipotence' and as such is the divine off-spring of the creator. As 'dharma' is said to be the king of the kings, so Danda is held to be above kings, - a figurative way of expressing the subjection of even the highest authority of the rule of law.

The later smritis contain interesting provisions to the relative powers and responsibilities of the different categories of persons composing a sabha. Brhaspati speaks of the king as vaktā, Adhyakṣa and Sāgta. It is interesting to note that even the sabha can conflict Nāgaradanda (admonition) and Dhigdanda (rebuke). But the king alone can inflict Arthadanda (fine) and vādha danda (corporal punishment).
Manu has dealt with the theory of coercive authority (danda) in great details. Danda according to Manu, is the king, the male, its director and the ruler as well as the surety of observances of their duties (dharma) by the four orders (āśramas). It is further noted that danda rules all people, danda alone protects them, danda is awake when other are asleep, the wise declare danda to be identical with the law (dharma) Through fear of danda all creatures, movable and immovable are prevented from swerving from their duties. 58

Manu in the next place, describes the vital importance of the king's attitude towards danda from the standpoint of the individual and the community. When danda, he says, is applied after due consideration it makes all people happy but when applied without consideration it destroys everything. Manu concludes with an account of the essential qualifications of the ruler for the successful application of danda. The king we read, is a just inflictor of danda, who is truthful and wise but if the king swerves from his duty (dharma) danda strikes him down along with his own relatives and kingdom. Regarding the rulers' qualification, Manu further says that danda cannot be inflicted justly by one without assistants or a fool or a covetous man, or one whose mind is unimproved, or one who is addicted to sensual pleasures, while it can be justly inflicted by one who is pure and truthful, who acts according to the cannon, who has good assistants and who is wise. 59

58. Manu Smriti VII 17-19
59. Ibid VII 1-22
Thus, Manu in the first place emphasizes the high authority of Danda by raising it to the level of the foremost political principle as well as divine institution derived from the highest divinity. This view is justified by the function of danda in ensuring individual security in respect of person and property as well as stability of the social order. In the second place, it identifies danda with law, so as to mean probably that the one is the essential means of fulfilment of the other. Thirdly, that the fear of danda is the grand motive for the fulfilment of individual obligation. Fourthly, according to the author, the king's mode of application of danda results in the weal or woe of the individual and the community. For while its just application leads to individual security and happiness, its careless or improper application produces complete insecurity of person and property, and results in the overthrow of the social order. Fifthly, the author takes the occasion to impress upon the king the importance of just application of danda — the contravention of which may lead to cosmic reaction. Sixthly, and lastly, the author lays down the principle of the king's unlimited jurisdiction over offenders irrespective of their rank and status. This enjoins strict impartiality upon the king in the administration of criminal justice.

Yajnavalkya's theory of danda involves a repetition of some of the basic ideas of Manu set forth above. The king having acquired his kingdom, we are told, should inflict danda
upon the wicked, for law (dharma) was created in days of yore by Brahma in the form of danda. When danda is applied to canon it gladdens the universe but if applied otherwise it afflicts the same. If the king applies danda unrighteously he loses heaven and fame as well as the world, while he aims heaven and fame through its just application.

It is remarkable to notice in the dharmaśstras the king's obligation to protection. The king by protecting the beings, says Vasistha, attains success. In the present period the infliction of punishment or more generally of coercive authority (danda) by the ruler is recognized as one of his distinctive prerogatives and duties. In the course of his enumeration of the occupations of the classes and the orders, Gautama observes that the king's additional duties besides those shared by him with the Upper classes comprise the protection of all creatures and the just infliction of punishment. Punishment and fighting, says Apastamba are the additional occupations of the ksatriya over and above those shared by him with the Brähmana and the vaisya. Describing the application of the king's danda, Gautama says that the king shall restrain those who do not restrain themselves and Vasistha more pointedly observes that the king shall apply it against those who violate their prescribed duties (dharma). According to Visnu the king shall inflict danda.

60. Vas. dh.S.XIX. 10-2  
61. Gau. dh. S. X.8  
62. Āpa dh. S.II.5.10.6  
63. Gau. dh. S.XI, 28; Vas. dh. S.XII.7-10
justly within his own domain, while no one who has violated his dharmā is exempted from dāṇḍa. The dāṇḍa inflicted by the king, says Gautama in a text quoted above, protects the people. In other words, dāṇḍa, subject to the condition just mentioned is the means of ensuring the security and prosperity of the people. It is widely recognised that gambling inflames passions, engenders quarrels and cruelty and leads to waste. But gambling supervised by royal officers was allowed. This is for the reason to help in detection of criminals. One who gambles in unlicensed places or ways is to be fined.

Apart from these there are many more offences which come under religious and social crimes. We get references of them in different smṛtis though a detailed discussion on these crimes is still wanting. Moreover, false representation in a marriage, counterfeiting of coins, cruelty to animals, unnatural offences, treason are regarded as crimes punishable by state. We will refer to them while enumerating the different punishments.

Origin of the word dāṇḍa and its meaning:

Gautama says that the word 'dāṇḍa' is derived from the root 'dāma' (to control), that he (the king) should control by means of dāṇḍa, those who observe no restraint and that the instructions of the teachers and the power of punishment (weilded by the king) guide those who violate the rules of varṇas and āśramas, Banda is raised to the position of divinity by Manu.

According to him dāṇḍa rules over all people, it protects all

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64. Viṣṇu-dh. S. III. 91,94,96
65. Gauḍa-dh. S. XI. 33-34
66. Manu Smṛti VII. 25
of them, danda is awake even when (the guardians) the laws have gone to sleep, the wise regard danda as dharma. The conception of danda is, therefore, this that the state's will and coercive power keep the individual and nation within the bounds of dharma, punish for breaches and effect the good of the whole. The eulogies of danda that are met with in the dharmaśāstras presuppose the theory that people obey law and the dictates of the śāstra through the fear of force of punishment. Time and again it is laid down that the danda should not be too severe or too mild but should be appropriate to the offence committed.

It will be seen from the early śāstras like Gautama and Manu smṛti that the ancient criminal laws in India was severe and drastic but from the time of Yājñavalkya and Nārada the rigorous nature of punishment was lessened and softened, and fines came to be the ordinary punishments for many crimes.

Theories:

The end of punishment as universally accepted are four in number, viz., (a) deterrent; (b) preventive; (c) reformative and (d) retributive. We will now discuss which one of them was the main end of punishment as upheld by the Hindu dharma śāstras. We shall also discuss whether the sastras embody all the four purposes.

In primitive society, punishment was mainly retributive. The person wronged was allowed to have his revenge against the wrongdoer. The principle of 'an eye for an eye', 'a tooth for
a tooth', was recognised and followed. Retributive punishment gratifies the instinct of revenge or retaliation which exists not merely in the individual wronged but also in the society at large. In modern times, we have given up the idea of private revenge but the state has come forward to have the revenge in place of the private individual. It is pointed out that commission of a crime creates the emotion of anger and the instinct of retribution.

It is held that retributive punishment is an end in itself. Apart from all gain in society the victim or the criminal, should meet reward in equivalent sufferance. Such an idea can be traced back to the ideas of blood guilt. According to this view, it is right and proper, without regard to ulterior consequences, that evil should be returned for evil, and that as a man deals with others so should he himself be dealt with.

A more definitive form of the idea of purely retributive punishment is that of expiation. In this view, crime is done away with, cancelled, blotted out, absolved or expiated, by the suffering of its prescribed penalty. In the smrtis we get ample references of this fact which we have discussed in the foregoing chapters. Apart from this, in the secular punishment also this theory was followed for Manu clearly lays down the 69 same principle.

Punishment is, in the second place, preventive or disabling.

69. Ibid. VIII.20
Its primary and general purpose being to deter by fear, its secondary and special purpose is, wherever possible and expedient, to prevent a repetition of wrong doing by disablement of the offender. It differs from the reformative type on the ground that the preventive theory is based on the ground of fear. But in the reformative theory the main aim is to remove the evil intention and to make him good. The preventive theory aims at prevention of the crime but it does not try to reform the criminal which is the main purpose of reformative theory.

The reformative theory maintains that the object of punishment should be the reform of the criminal and that is possible only through changing the character of the criminal. This theory is gaining ground and becoming popular in the civilized society. The new science of criminology has gone for towards identifying crime with disease. Even if an offender commits a crime, he does not cease to be a human being. He may have committed a crime under certain circumstances which might never occur again. The object of punishment should, therefore, be to bring about the moral moral reform of the offender.

The advocates of the reformative theory points out that by a sympathetic, trotful and loving treatment of the offenders, a revolutionary change can be brought about in their characters. Even the cruel hard-hearted persons can be reformed and converted into helpful friends by good words and mild suggestions. Severe punishment can merely debase them. Manu always kicks against
pricks. Whipping will make him balk, threat will result in resistance.

The purely reformative theory admits only such forms of punishment as are subservient to the education and discipline of the criminal, and rejects all those which are profitable only as deterrent or disabling. Death, in this view is no fitting penalty; we must cure the criminals, not kill them. The approach should be to bring them to the right path so that they could give up the unsocial elements of their character. They should be given a fair chance to reform themselves. Kautilya and Sukra deal fairly with this side. When we discuss the punishments laid down by Kautilya for the crimes we find that Kautilya is very strict and prescribe harsh punishments for the crimes but it also becomes clear that the main purpose of his punishments are more or less reformative.

As regards the deterrent aspect of criminal justice, it is held that the foremost aim of punishment is deterrent and the chief end of the law of crime is to make the evildoer an example and a warning to all that are like-minded, i.e. similar criminals. According to this theory, the object of punishment is not only to prevent the wrong-doer from doing a wrong second time but also to make him an example to other persons who have criminal tendencies. Thus the aim of punishment is not revenge but terror. An exemplary punishment should be given to the criminal so that others may learn a lesson from him, and refrain from commission of similar crimes.
The deterrent theory emphasizes the necessity of protecting the society, by so treating the prisoners that others will be deterred from breaking the law. According to Manu, "Penalty keeps the people under control, penalty protects them, penalty remains awake when people are asleep, so the wise have regarded punishment (danda) as a source of righteousness". Again "people are in check by punishment, for it is difficult to find a man who by nature sticks to the path of virtue and this world is enabled to afford sources of enjoyment through fear of punishment.

Factors of Danda:

The guiding principle in awarding punishment is laid down in the Manu Samhita. The following matters are to be taken into consideration with thorough analysis (tatvatah):

1. the anubandha or motive
2. the place and time - the circumstances under which the offence was committed
3. the capacity of the criminal
4. the crime itself.

Anubandha is explained by Medhatithi as repeatedness of the offence or the cause of the act. In view of the first meaning the punishment would be invariably severe, while in that of the latter it may be lighter. Manu also shows that 'anubandha' had the sense of 'motive'.

It is necessary to look into the previous history of

70. Ibid. VIII. 126
this element. According to Gautama through ascertainment is to be made about - (1) the doer, (2) the capacity of the culprit, (3) the crime itself and (4) the motive.  

Kauṭilya has - (1) the doer, (2) the offence, (3) the agency and the part played by it, (4) the motive, (5) the circumstances present at the time of the offence and (6) the place and time. But Yajnavalkya omits anubandha altogether: Probably the act itself in his opinion was the evidence of the motive.

Method of punishment:

There being hundreds and thousand varieties of crimes, punishment prescribed for them also are innumerable. The nature of punishment varies with the gravity of the offence committed. Punishment were simple or in commensurate with the basis of the gravity of the crime and the capacity of the criminal. Generally fine, capital punishment, mutilation, imprisonment, banishment etc. are mostly and widely applied punishments. Nārada has accepted two main types of punishment - fine and capital punishment.

Almost all the law codes hold that there are four types of punishment - vāgdanda (punishment of repuke) dhigdanda (punishment of insult), arthadanda (fine) and finally mṛtyudanda (capital punishment). The Daṇḍaviveka has quoted a verse of Brhaspati, regarding the kinds of punishment, which runs as

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71. Gau. dh.S. XII.61
72. Arthaśāstra 266
73. Manu Smṛti VIII.129; Yāj Smṛti I. 367
follows:

"that is, punishment is fourfold, viz. admonition, reproof, fine and corporeal. It should be meted out by considering the offender, his pecuniary conditions and the particular crime committed by him". 74

Vardhamāna, the commentator on Danda viveka affixes a note explaining the above, which is as follows:

"admonition means rebuking a person with the words 'thou has not acted properly';

"reproof or reproaching means a person with the words 'Fie to thee, villain, perpetrator of evil deed';

"Fine is of two kinds, viz. fixed and fluctuating. Fixed fine corresponds with the three kinds of crimes (sāhāra) and is low, medium or high."75

Corporeal punishment is of three kinds: viz. infliction of pain, mutilation of limbs and death proper.

Pain can be inflicted in four ways, viz. by beating, restraint, chaining and harassing. Beating means whipping; restraint consists in checking a man's activities by imprisonment and so forth; and chaining implies curbing a man's free movement by means of fetters. Harassing is of many kinds viz. shaving the head of the culprit, making him mount on an ass, imprinting his person with the word, 'thief', proclaiming the specific offence with which he is charged, with beat of drum, making him patrol the whole city etc.

74. Daṇḍa viveka p.20; Śṛhas quoted by Smṛti Chandrika II.p.126
75. Vardhamāna on daṇḍa viveka p.20
Mutilation is of fourteen kinds inasmuch as there are fourteen parts of the body which can be mutilated. The fourteen parts are: hand, leg, organ of generation, eye, tongue, ear, nose, half-tongue, half-leg, thumb and the second finger taken together, forehead, upperlip, rectum and waist.

Death proper is of two types viz. pure and mixed. Pure death is also of two kinds viz. simple and complicated. "Pure death" can be affected by the stroke of a sword while the complicated variety occurs as the result of the use of various means, e.g. riding on a stake. Mixed death is caused by the combination of mutilation with other punishment.

In the Vedic period the first two kinds of punishment were mostly resorted to and when the crime was of major type it was to be expiated. But towards the latter period we find the inclusion of the other two kinds of punishment also. It is no doubt, true that fine and capital punishment were given to a criminal in the Vedic period as well but its use was very scarce. The final development of these two types of punishment can be observed only towards the period of the smrtis and the digests. It can safely be stated that these four types of punishment are connected with moral, mental and physical sphere of a person.

Manu believes that these punishments are used successively. To that effect he observes that if the vāg-danda fails to reform the criminal then the dhigdanda should be resorted to. Even if that type of punishment fails to reform the character of the
criminal then only fine should be imposed on him. It is only when all these fail to achieve their purpose i.e. to reform the character of the criminal the last and final type of punishment i.e. capital punishment should be brought into operation. Of these the first, i.e. gentle admonition (dhigdanda) takes the form of 'fie upon you who are wrong doer and guilty of adharma'. These two types of punishment are based on the mental sphere of ours and their main purpose is to reform the criminal and to relieve him of his mental agony. They try to chuck out the criminal attitude from the person concerned. In this context it can be mentioned that admonition and reproof are two methods of punishment which prove that ancient writers also were alive to the notion that among very sensitive persons or in a very sensitive society verbal condemnation would be enough to achieve the main purpose of punishment especially in the case of a preceptor, purohita a Brahmana.

This division of the methods of punishment as supplied by the dharma sastras is too precise to include all the varieties of punishment. It can, therefore, safely be asserted that the division of the method of punishment as supplied by the modern writers would be more useful in this context. From that regard the division could perhaps be made this way as well - (a) Death penalty; (b) Physical torture; (c) Reproof; (d) Social degradation; (e) Imprisonment; (f) Financial penalties.

76. Manu Smrti VIII. 129-30
Corporeal punishment has flourished in most societies as a method of punishment. In the Hindu legal codes capital punishment is offered only in the case of gravest offences. Conspiracy against the king, treason etc. are such kind of crimes and only in such cases the punishment ending in death is given. In the dharma Śāstras we find that capital punishment is inflicted upon the criminal who commits one of the mahapatakas. According to Manu if a person does not undergo expiation he should be punished with capital punishment.77

It seems that the general tendency of the country in the early centuries of the Christian era had been to look at capital punishment with disfavour. The reason, amongst others, was the spread of Buddhism. The discussion in the Mahābhārata on the undesirability to continue capital punishment is very important in this regard. It, indeed puts emphasis on the desirability of punishing offences. But the punishment should be inflicted 'without destroying the person' of the offender. In support of this, four reasons are advanced:

(i) Capital punishment of the culprit causes hardship upon his innocent dependants. By killing the wicked, the king kills a large number of innocent men; (for instance) by killing a single robber, his wife, mother, father, children etc. are (sometimes) killed.

(ii) The offender may be capable of improvement. Sometimes a wicked man is seen to imbibe the right mode of life.

77. Ibid. IX. 236
(iii) Capital punishment takes away the possibility of good members being added to the society. "It is again seen that good people do spring from the wicked ones".

(iv) A historical reason: "the offender should not be uprooted for it is not in consonance with the traditional law." The Mahabharata further says: "The end of punishment which the traditional law had in view is assumed to be a mental cure, "and for mental cure, non-capital punishments are prescribed (in ancient law) - mental pain, imprisonment, disfiguring etc."

It may be because of the above mentioned reasons even Manu, who is very particular and strict in punishing a criminal holds that capital punishment should be resorted to only when all other modes of punishment fail to reform the criminal.

Shame and humiliation are penalties designed to reduce the social status of the offender sometimes temporarily and sometimes permanently. It is believed that with regard of very sensitive persons even social degradation is enough to meet the punishment i.e. mental chastisement, and deters him from committing such unhealthy action especially in the case of a preceptor, purohita and a brahmana.

In after-trial punishment, a brahmin was not subjected to tortures, yet as a substitute for tortures, on his forehead the degrading symbol of his offence is to be stamped as a deterrent, And then he had to serve out his sentence in hard work eg. at the mines. If the offence is heinous, the mark of

78. Mahābhārata XII. Ch.267, 10-16
degradation, is to be cut into him and he is made to work at the
rand. This quite in keeping with the Hindu principle of the
object of punishment. Originally punishments were devised to
be 'mental chastisement' (prāyascittta) and to be deterrent (pra-
tyādesya). The Brāhmin culprit was subjected to pointed ignominy
in addition to his punishment. Owing to learning and birth
he is only spared physical tortures. In effect branding operates
as a severe punishment. No one including his family members
could hold any social intercourse with a branded man, all legal
rights are denied to him. He comes a social and legal outcaste,
an outlaw, not to be sympathised with, not to be heard in law
courts. The great offender even after undergoing punishment
are not fully admitted into society. They do not, for instance,
become competent witness.

Banishment prohibits the criminal to come into a specified
territory and sometimes it prohibits the person to go into other
territory as well. If and when turned out of the country, the
criminal is worse off. At the mines or prison the criminal
could manage to get his food at least but if banished from the
country he has to die of starvation. He being 'countryless' or
home less also entails loss and forfeiture of property.

In the Artha Sastra, the prison appears as a well known
institute but the codes are unintelligibly silent about it.
There is not a single case where imprisonment is awarded. But
we do find some reference of it in other sastras. Sukra prescribes

79. M.S. IX, 235-241
life imprisonment for repeated crimes. Even Manu refers that prisoners should be set free on the occasion of the victory of the king, coronation of a king and birth of a son to a king.

Financial penalties, either in the form of general confiscation of property or of a fine have existed in most literate societies. When an individual is injured by another he might claim damages depending on the injury done to him and the social position of the injured party. It is also claimed by the state for the injury done to the state by disturbing the peace. To the Hindu codes there are different types of fines. According to them there are three divisions - prathamasāḥasa, madhyamsāḥasa, and uttamasāḥasa. He holds that from 24 Panas 91 Panas it is prathamasāḥasa; from 200 to 500 panas it is madhyama and from 600 to 100 panas it is uttamasāḥasa. According to some Śāṅkara the first ranges from 24 panas. Yajnavalkya gives highest 1080 as a maximum, half of it the middle, and half of the middle the lowest. Manu makes the three 250, 500 and 1000 respectively. The economic condition of the person fined has to be taken into consideration among the eleven points to be taken into account in deciding on the type of punishment to be awarded. Offenders varṇa, his age, past record, in the case of corporal punishment the place on which it is to be administered, the time of the offence and details of the offence should be taken into account to determine its exact nature. One who commit offence for the first time is to be treated more lightly than an old offender.

80. Śakra. 4.1.88  
81. Manu Smṛti IX.288  
82. Manu Smṛti VIII. 138, Yaj. Smṛti I. 326
Though Manu and other Smrti writers differ in number yet they all agree to the three divisions. Närada goes a step further when he includes under the head of uttamasahasā, the capital punishment, banishment, mutilation etc. The fines so realised go to the royal treasury. The fines realised from the mahapatakins are not accepted by the king but are donated to the brahmanas.

(1) Now we pass over to the enumeration of punishment of some of the major Crimes. Vākapārusya has been named first so are we take up the punishment provided for vākapārusya. Vākapārusya, as we have discussed above, is of three types viz. lowest (when the country, caste or family of a person is abused or sinfulness is ascribed without specifying any definite act), middling (speaking that the abuser will have sexual intercourse with the mother or sister of the abused or ascribing the commission of upapātakans or minor sins to the abused), highest (charging him with taking forbidden food or drink or mercilessly exposing or ascribing the grave sins to a person). Various fines are prescribed in the Smrtis based on the above mentioned distinctions and also on the castes of the abuser and abused. For example Manu prescribes the punishment 100, 150 or 200 paṇas, corporal punishment respectively against a ksatriya, vaisya or a śudra abusing a brāhmaṇa. In the next verse he again holds that a brāhmaṇa calumnialing a ksatriya, vaisya or śudra should respectively be fined 50, 25 or 12 paṇas. If

83. Ibid. VIII 267-269
altercation take place between Brāhmīn and a ksātriya, in course of which rude speech is uttered by either or both parties, the Brāhmīn is to be fined Purvasāhāsa and the ksātriya madhjasāhāsa. If the parties are a vaisya and a sūdra, similar punishment follows. Thus the determination of the penalty rests also on the relative superiority or inferiority of varṇa of the parties. For example for abusing a Mūrdhavāsikta who is inferior to a Brāhmaṇa, but superior to a ksātriya, a brāhmaṇa deserves a penalty of seventy five paṇas which would be slightly above fifty paṇas which is fixed for the penalty for the abuse of a ksātriya. A ksātriya also for abusing him becomes amenable to a fine of seventy five paṇas which would be slightly less than hundred paṇas, the penalty for the abuse of a Brāhmaṇa.

According to Yājñavalkya - "He who by true or untrue or ironical statements attack (or insults) persons (as) wanting in limb of faculty or as diseased, shall be fined 1/2 paṇas". The strictness and harshness of punishment provided by Manu can fairly be understood from the following verse: "If one talks with arrogance about the learning (sruta), country and birth (nationality), occupation, or about the body matters (or another), untruly, the fine shall be two hundred. If a one-eyed man of a khaṇja (lame man or man of defective limb) and others (similar ones) are spoken about in that way (i.e. arrogantly), even if truly, the talker (slanderer) shall be fined at least one kārśāpana". We see that the fine in the first case is raised

84. Yāj. Smrti II.204
85. Manu Smrti VIII 273-274
to two hundred, while in the latter it has a tendency to be reduced by sumati.

When however sons abuse mothers or such respectable persons, then these should be fined, a hundred as has been said by Manu. 86 "He who defames his mother, his father, wife, brother, son or his teacher and he who gives not the way to his preceptor shall be compelled to pay one hundred panas", This rule moreover is to be observed in the case of the mother and other elderly (and respectable) persons who are guilty, and in the case of a wife who is innocent. Where one man mentions another as patita (guilty of grave sins) in order that he may be avoided by others, there he would not be guilty provided he can establish the guilt on the man, whom he mentions as patita. But if otherwise, he would be guilty of falsely finding out fault. The fine for him is declared to be the highest. 86 This carries us to another important factor that mere truth of an imputation is no defence in a charge for defamation. It is required that the imputation is made for public good. This idea corresponds to exception one to section 499 of Indian Penal Code.

Nārada states: "He who first offers an insult is regarded as criminally responsible; one who return the insult, such a person is likewise capable, but (for him who was) the first, (to begin) however, the punishment shall be heavier." 87 The meaning is that on account of the quarrel having started first,

86. Krtyakalpa 776-777 87. Nār Smrti XV.9
the punishment shall be appropriate for that reason i.e. it shall be higher than that for the quarrel being returned afterward.

These instances are enough to explain that most fine is imposed as a punishment for the offence of defamation. Manu, of course, provides corporal punishment for the offence of defamation by a śūdra against a brahmana. Katyājana observes that the king should with great concentration establish the guilt of the man charged with abuse and if he is informed falsely about the guilt his punishment should be cutting of the tongue for those who are addicted to spreading false reports. We do not get any other instances of this sort in the other smṛtis save this. Yājñavalkya all along provides fine as the only way of punishing a criminal charged with defamation.

The codes also draw a sharp distinction between true and false imputation. When the imputation is false the punishment provided is double in nature than when the imputation is true. Nārada Smṛti clearly emphasizes that even if the imputation is true the person who makes the imputation is liable to be punished.

88. Nar Smṛti XVIII.21

Punishment for Danda + Pārusya:

"Danda Pārusya" being one of the major crimes the punishment laid down for the offence is also harsh in nature. Physical torture type of punishment is frequently applied in this offence. It is believed that pecuniary compensation is not enough for this
offence; it needs something more to deter a person from committing the same offence in future. But punishment in the shape of physical torture etc. are inflicted upon the criminal when the offence committed is of the highest degree. Otherwise pecuniary compensation is more than enough for punishing a criminal.

In cases where assault is alleged and the only direct evidence offered are the allegation of the complaint and the marks of injury, great caution is to be exercised in drawing an inference from circumstantial evidence 'as there is the danger of fabricated wounds, false make-belief etc.' Further, he is very much lenient when he excuses totally an offence committed under intoxication and want of intelligence of power of reasoning (moha). But when several men inflict hurt on a particular person, the offence should be treated as serious and the punishment should be doubled.

The most interesting point to be noted in this connection is that when no blood comes out, though a man is belaboured with sticks, the fine is half of that which is awarded when there is ejection of blood.

Under this head are brought not only actual assault, like striking a man, but also threatening to assault him or touching him. By extension (atidesa) certain other matters that are not strictly assaults are brought under this category. Among them are inferiors in social status. The relations between parents and children as regards parental discipline or between teacher

89. Yaj Smrti II. 212
90. Ibid. II. 214
91. Ibid. II. 221
92. Ibid II. 218
and pupil (guruśiṣya), which may lead to chastisement of pupils are also brought within this category. Injustice suffered from kept animals or beasts of burden or carriage animals, are also included in this section. Lastly injuries to free and plants also come under this category.

As in the case of Vākparusya, the fines here are of three grades, for, says Narada "of that also, three varieties have been noted, as it may be small, middling or extreme, according as it consists in the raising (of a hand or weapon), or in an unexpected attack or causing a wound, by regard to its effect on articles of small, middling or superior value. The meaning is that by a comparative appreciation of the motives behind the action of the perpetrator, as also by a relative value of the particular thing the object of the attack, the three-fold variety is determined as of the first, middling or extreme kind.

Offences committed by equals get the standard penalty. An offence committed by one of a higher varna or status gets a higher penalty than one in the inverse order, the penalty rising with the difference in varna or falling with it. Offences are also classed as those which cause ordinary hurt and those that cause grievous injuries, such as peeling of the skin, cutting into the flesh, drawing blood, fracture, loss of eyes or ears or nose, or limbs and so forth. The gravity of the injury decides the penalty's severity. To this regard, Brhaspati opines that for

93. Nar Smṛti XV.5
committing assault upon each other by persons of equal status striking simultaneously, the punishment has been declared to be equal the first aggressor as also one who persists shall be compelled to pay an enhanced fine."\textsuperscript{94} When, however, there is no equality in number, \textit{Yaj}. specifically supports the view forwarded by \textit{Vishnu} : "Where several persons attack one the punishment for each shall be double of that has been ordained for a single person".\textsuperscript{95}

\textbf{Brhaspati summaries this offence in where he says -} "Scattering with ashes or the like also beating with the hand etc amounts to the first kind of assault and the fine in such cases would be a \textit{masa}. For assaulting with bricks, stones or wooden club, however, two \textit{masas}. Such punishment would be increased twice or thrice, if the offence is committed in relation to women or persons of superior status than that of the offenders. He who throws dust or clay towards another is to be fined ten copper coins. He who throws tears, sputum, phlegm or similar other excretory matters should be fined twenty copper coins. He who throws stool, urine, or seminal fluid in the lower part of the body of another person should be fined forty copper coins. The fine is doubled, if those things are thrown over the head. He who causes the flow of blood from other person by piercing \textit{ṣāgā} against the skin is to be fined a hundred copper coins; but the punishment for piercing against the flesh, this causing a grievous

\textsuperscript{94} Brhaspati \textit{Smṛti} XXI.13
\textsuperscript{95} \textit{Yaj}. \textit{Smṛti} II.221, \textit{Viṣṇu Smṛti} V.73
hurt, is six dinaras (gold coins)". Thus it can be well inferred from the above that the punishment is adjudged with proportion to the act. Manu also states that the act committed should be taken into consideration while adjudging the penalty. 

But if the assault or striking is through infatuation, anger or error there is no punishment. Further if a person strikes another by a cudgel under a sudden provocation, and death results from the stroke, then the offence will be treated not as murder but as a rash act not amounting to murder and punishment will be awarded accordingly. Dharmasastras believe that murder is committed with the express intention of putting a person to death, while "culpable homicide not amounting to murder", or grievous hurt is done with the intention of injuring a person. Like the infliction of bodily pain, infliction of mental pain is also an offence and is punishable.

Further, if a person causes bodily injury to another, such as dislocation or fracture of bones, oozing out of blood from wounds, then he should provide the aggrieved party with the necessary expenses of diet and medicine to set him right. Yajnavalkya and Brhaspati state that for injuries to a limb or piercing or cutting likewise he shall be compelled to pay the expenses of healing and also to restore what was taken away during the quarrel. Viṣṇu also states in the same line.

If an assault or similar offence is committed for saving

96 Yāj. Smṛti II.222; Brhaspati Smṛti XXI.10
100 Viṣṇu Smṛti V. 75-76
one's own life which cannot be saved otherwise, no punishment follows from a person's inherent right to private defence. Hence killing an assailant (atatāyin) does not constitute an offence.

Protection of trees:

Butting of the branches and trunks or roots of food-yielding trees makes the offender liable to a fine and in the case of sacred trees (or temple) the penalty is doubled. Vasistha holds: "Let him not injure trees that bear flowers or fruit, except for sacrifices and extending cultivation".  

101. Vasistha quoted by Krtya.504

For punishment of immovable or animals, Manu and Visnu maintains "A feller of fruit yielding trees shall pay the highest amercement, a feller of trees yielding flowers, the middle amercement. He who cuts creepers, shrubs or climbing plants a hundred karsapana; he who cuts grass one and all shall make good to the owners their yield."  

102. Manu Smrti VIII. 285; Visnu Smrti V.54-59
Punishment of Steya:

'Steya' is also regarded as a major crime and so generally physical torture type of punishment is meted out for this kind of offence. As in other offences, the gravity of the punishment varies with the gravity of the offence committed and as such different kinds of punishment are prescribed with the variation of the gravity of the offence.

When a person is held to be a thief, such a person should be arrested by the police officer. It is possible to arrest such a person when he is found in possession of the lost article or he may also be detected by virtue of footmarks as well. The smrtis also lay down that a person may be arrested on suspicion of theft also. But an inquiry to that effect should be conducted so after he is apprehended so that an innocent person is not victimised. But if a person who is apprehended on suspicion of theft does not clear himself from that charge, then he shall be compelled to pay the lost property to the owner and the king should punish him with the first amercement.103

A thief is generally punished by the mode of corporal punishment. This is specifically followed when the article that was stolen from its lawful owner is of superior quality and in that case the punishment of first degree is incurred by the guilty person. But when the article stolen is of inferior quality such as flowers, clothes, etc. the first degree punishment may not be

103. Yaj. Smrti II. 269
given to the person concerned. Nārada holds: "The series of punishments, which has been ordained by the wise for the three kinds of sāhasas is equally applicable to theft, according as it concerns one of the three species of articles in their order." 104

It is interesting to note that in determining the type of punishment different aspects such as caste, the value of property and its amount as also the age, capacity of the offender are to be taken into account. Manu says "In (the case of)theft the guilt of a sūdra is eight fold, sixteen times, that of a vaisya and thirty two times in the case of a ksatriya. That of a Brāhma sixty-four fold, or quite fully a hundred or (even) twice four and sixty-fold; (each of them) knowing the nature of the offence". 105 Yāj. also lends support to this attitude when he says "In the case of the theft of inferior, middling and superior articles, the fine shall be according to the value. In passing sentence, the place, the time, the age and the capacity should be taken into consideration". 106

The punishments of beating, deprivation of a limb or death should be declared against the thief after taking into consideration of the owner robbed as also the time being plentiful of harvest or of famine. The text further lays down "If thieves commit thefts at night after breaking into a house, the king shall cut off their hands and have them impaled on a pointed stake. On the first conviction he should have two fingers of the cutpurse amputated,"

104. Nār Smrti XIV.21 105. Manu Smrti VIII.337-338
106. Yāj Smrti II. 275
on the second a hand and a foot; and on the third he should be put to death*. Further the punishment for the theft of a boy, a horse or an elephant is death. Along with it an additional punishment of confiscation of property is provided. For stealing away men of noble family and especially women and precious gems of all kinds, he deserves the punishment of death. Manu however lays down that punishment for one who steals away a man is the highest amercement; in the case, however, of a like offence against a man woman, he shall be deprived of his entire property; and a corporal punishment for one who steals a maiden. Further for theft of horses, elephants and metals the king should take whole wealth of the thief. According to Manu he who steals more than ten kumbhas of corn corporal punishment should be inflicted. In other cases i.e. in a theft from one to ten kumbhas he should be fined eleven times as much and shall pay to the owner the price of the corn stolen. Kulluka says vadha may consist of flogging, mutilation or even capital punishment according to the qualities of the person robbed. The king should make the thief restore the thing stolen or its price and should inflict on him various kinds of corporal punishment.

Corps maliciously destroyed by husbandsmen amounts to theft and entails a fine of ten times the king's share. In such a crime a fine to the king of twice the value of the article stolen is also imposed. Death penalty or mutilation of limbs is imposed.

107. Ibid. II.274 108. Krtyakaipa 529
109. Manu Smrti VIII. 323 110. Manu VIII. 323
111. Ibid. VIII. 320
on the thief of costly gold articles or bales of costly clothing or precious stones. For stealing articles of small value there are small fines e.g. for milk and milk products the thief should repay the value to the owner and twice the value as a fine.

If a trader abstracts an eighth part of an article sold by the use of false measures or scales, he will be fined in proportion to the degree of cheating, that for stealing an eighth part being 200 panas. He who steals as seed what is not seed must suffer mutilation. Adulteration of medicine, salt, molasses and the like with inferior stuff entails a fine of 12 panas. Mutilation is the penalty for using false weights and measures or the highest amercement.

Punishment for साहासः:

Usually offences are classified into kinds varying with the severity of the penalties imposed. Classified into three kinds they reflect the lowest, middling and highest punishment. First sort includes offences due to the destruction of trees, fruits, roots and water reservoirs etc. Injuring cattle, looting food, household utensils or drinks represent the middle class and the highest type of violence includes the offences made by taking away a man's life, by weapons or poison and attacks on life and violence to another man's wife. For the first type of offences fines range from two hundred and fifty panas according to the

112. नर सम्ति XVII. 4-6
damage done, for the second, it begins with five hundred and for
the third class fines are of thousand panas. It is not
uncommon to impose bodily penalties such as amputation of limbs
and branding etc. and confiscation of the entire property for
this kind of offence. For the ordinary property robbed the
penalty is a fine of twice the value of the article robbed, and
four times the value, if the offence denied by the accused.
For demolition of walls and houses the fine is twice the value of
the cost of the thing destroyed. For setting fire to a house
or forest or threshing grounds the penalty is beyond the fine
limit and may extend to death by fire. Death is a sure punish-
ment/making a free girl a slave.

Generally the punishment for woman are lower than those
prescribed for men. But if a woman sets fire to a house, or
poisons a person, or kills her children, husband or elders, she
should be tied up and thrown into water, provided she is not
pregnant. Killing a pregnant woman is killing her and the
unborn child. Yama would prescribe only corporal punishment to
persons guilty of arson, grave theft and murder. Procuring abortion
and causing hurt by weapons earn only the highest punishment.

For murder, death in various form is the penalty according
to the varying degrees of the gruesome nature of the offence.
Confiscation of the property possessed by the murderer is also a
part of the penalty. Brhaspati states the first two varieties

113. Manu Smrti VIII. 188 114. Yaj. Smrti II. 232
116. 
of sahasa with the object of detecting the perpetrator of a sahasa 'where the person killed is seen, but the killer cannot be discovered, such an one should be traced by the king by drawing an inference from previous enmity'. The thief should be found out from his association with bad men, from signs and from the stolen property possessed by him. Thus the ways of discovering or ferreting murderers and robbers are provided with.

When several person attack a person and kill him, the person who gives the fatal blow is only sentenced for murder. The other assailants of the murdered man shall suffer only half the penalty of the person who deals the fatal blow and their culpability and its penalty should be determined by consideration of the kind of injury their attack caused before death. The person who incites one to do a crime must pay double the fine which is to be paid by the actual culprit.

For those other than the fatal assassins the penalty has been stated. "The first aggressor and the abettor, as also the one pointing out the way; one who gives shelter, supplies arms, as also gives food to the offenders; also he who advises or engineers the fight, and one who incites the destruction of him, one who is engaged in the affair, who points out the fault and one who gives his consent; one who does not prohibit, he who tolerates, all those who are participators in different way in that act, for all of these appropriate punishment, one should determine." Yaj. however, states the highest form of punishment

117. Brhas Smrti XXII. 34-36  118. Yaj. Smrti II. 231
119. Brhas Smrti XXII. 32
with regard to the instigation of a higher or lower degree of
guilt. "He who causes the commission of sahasa shall be made to
pay a double fine, while he who causes it by declaring, 'I shall
pay', shall be made to pay four-fold." Manu prescribes no
penalty for one who commits sahasa if he had been incited by
anger etc. and in the case of those who commit a sahasa under an
injunction of the law. This idea of killing in self-defence
has been explained before.

The consideration of varna enters into the determination
of turpitude and penalty. In case a lower varna murders a
brahmana he will be sentenced to death and his entire property
will be confiscated. Satyakha imposes the penalties of
mutilation or death on one who sells a free girl to make her a
slave. Kātyāyana marks as equal in turpitude he who commences a
violent attack (sahasā) or gives advice to another regarding
the crime, or gives shelter to a criminal guilty of an offence,
feeds him and does not advice against the crime being in a
position to do so, with the actual criminal and prescribes
equivalent punishment.

Detection of grave crimes:

If the perpetrator of the crime is not found his sons,
relatives and neighbours should be questioned regarding his morals,
quarrels etc. to find out the causes of the crime. The king's
officers however must try their best to find out the culprit and

120. Bhūṣas-Smṛtī-XXII.-33  121. Manu Smṛtī VIII. 348-349
if unable to find proper proof for his guilt the person under suspicion must be put to an ordeal. He should be set free if he is absolved by the ordeal, but if the ordeal goes against him he must be imposed with the death penalty. The crime of violence are met by impalement or other severe punishments. Here the aim is to terrify others rather than to frighten the culprit.

Brhaspati was right when he states that it is by kindness to the good and by punishment to criminals that the fame of a king grows.

For perpetrator of the offence of robbery with violence Brhaspati states this punishment: "One who destroys or takes away implements of husbandery, an embankment, roots, flowers or fruit shall be punished with a hundred (pandas) and more may be appropriated. So one injuring or stealing cattle, clothes, food, drinks or household utensils, shall likewise be compelled to pay a fine with a minimum of two hundred panas. In the case of women, men, gold, gems, the property of deity, or of a vipra, silk, a precious article, the fine shall be equal to the value of these; or a double should be adjudged by the kings with regard to the men, or the killer should be executed with a view to prevent a recurrence of the occasion."124 Here destroying, taking away, injuring, stealing or killing involves robbery with violence (śāhasa) and law of punishment is applied accordingly. In that case, theft is committed by the killer as it was two elements—rage and avarice.

Punishment for Strī-samgrahana:

Strī samgrahana has been regarded as a heinous sin from the earliest times. Manu generally offers harsh punishment where violence is associated with the offence. His punishments are often as severe as death. Only in case of the willing maiden he follows the Maurya Law. But for adultery in defiance of the husband, the women was to be torn to pieces by dogs - an archaic punishment - and the adulterer was to be roasted and consumed slowly on an iron bed by putting burning logs of wood underneath.

According to Kautilya, caste is a determining factor of punishment in the offence of adultery. Manu states that if a brahmin is charged with the offence, he is imposed with pecuniary penalties or is exiled in case of rape. The other three castes face the corporal punishment for the same offence. Yajnavalkya on the other hand lays down that "torture for all when the offence was 'pralilomya' and imprisonment or fine when 'anulomya'. If persons commit rape upon women of their own and lower castes, then they should be fined a thousand copper coins, if he fails to do so it even follow mutilation of hands. The punishment for incestuous intercourse is mutilation of the penis. Persons guilty of carnal intercourse with women in their months are to be fined with forty copper coins; of intercourse with female animals in their vagina, a hundred copper coins; and intercourse with a cow, a gold coin.

125. Bhasa Manu Smrti VIII. 359
126. Ibid. VIII. 364
127. Ibid. VIII. 372
128. Ibid. VIII. 377-378
129. Yaj. Smrti II. 286
Yājñavalkya prescribes uniform law for all in rape and adultery.

(a) in adultery, imprisonment and fines are prescribed if it is with lower woman by one of higher caste.

(b) in rape on a lower caste by one of higher, the second class of imprisonment and fine for all.

(c) In rape of adultery by one of lower caste on a woman of higher caste torture;

(d) in adultery and rape amongst equals, the highest class of punishment of fine and imprisonment.

The punishment thus prescribed by Yājñavalkya is severer than Kautilya. But the most important feature to be noted is that if the complainant is a woman of the town the offence of force is presumed to be absent and the punishment is light.

Now we will discuss the punishment provided for this offence - 'Strī-samgrahana' in details.

Punishment for rape is death which often is coupled with confiscation of the entire property and mutilation of the organs of the culprit before he is put to death.\textsuperscript{130} For incest same punishment is provided by Nārada. According to Nārada adultery with a queen is equal to incest.

A fine of 100 will have to be paid by one who has intercourse with a protected woman and it will amount to 500 if it has been without the woman's consent but not by force like rape.\textsuperscript{131} For

\textsuperscript{130} Vira. p. 463 \hspace{1cm} \textsuperscript{131} Manu Smṛti VIII. 378
such an offence a brahmāṇa culprit and also a man of other varṇa will have his head shaved for such an offence. A brāhin min committing adultery with a sudra female shall be banished. A non-
brahmāṇa, rules Manu, who commits adultery with a Brāhmaṇa woman can be sentenced to a penalty up to death.\(^\text{132}\) If the offence is repeated the fine will be double the amount prescribed for the first one. Intercourse with caṇḍāla woman is banned and if anyone involves himself in such act punishment will be up to death.

Brhaspati holds 'He who has forcible intercourse the penalty should be inflicted on him for a woman's equal in varṇa; with one of an inferior varṇa, however, half of that, but a man who has inter-
course with a woman of a higher varṇa, should be put to death.'\(^\text{133}\)

Vāśisṭha while dealing with the sin caused by adultery notes that if the offender of the sin submits to legal punishment he is purified and as a common doctrine of smṛtis it acts as an expiation. If a woman seduces a man by coming to his house and tempting him, she will be disfigured or thrown into water or even sometimes put to death.\(^\text{134}\) A raped woman is kept on bare foot and clothes without attaching any criminality to her.

Offences of tainting virgins are of two kinds: Sexual intercourse and thrusting tings into the vagina. Unnatural offences have also been classed as two i.e. carnal intercourse with women against the order of nature and intercourse with lower animals.

\(^\text{132. Ibid. VIII. 359}\) \(^\text{133. Brhas Smrti XIII.10}\)

\(^\text{134. Yāj Smrti III.233; Viva Rat. p.398}\)
Pollution of virgins:

The defilement of virgins is considered to be a heinous crime as it leaves no chances for her marriage. As prescribed in the Smritis the marriage takes place at an early age and defilement of virgin meant physical injury to girls who have not attained puberty. The penalty for such an offence laid by Manu is death which may be considered just if we take into account the sufferings the girl has to undergo. If the culprit is of the same varna as the girl, he must be made to marry her without dowry and he may even have to pay the śulka (bride price) to the father, as in śūra marriage.

Unnatural offences:

A woman violating a girl shall be fined and have to pay her nuptial fee; and she will be made to parade in the street on the back of an ass with her head shaved.

Intercourse with harlots:

Intercourse with a harlot of his own caste causes only a small fine, which will be cancelled if she is of a lower varna. Intercourse with a woman kept as an mistress by another man will be considered as adultery and will entail a fine of 60 panas. If more than one person have intercourse with an unwilling prostitute each will have to pay a heavy fine. Unnatural intercourse with woman by a man, is punished as it is punished in the case of intercourse with a female animal.

135. Manu Smriti VIII. 366
136. Ibid. VIII. 370
Immoral Wife:

An immoral wife, and especially one who commits 'incest', is to be abandoned but her imprisonment or slaying is not allowed. An unchaste wife must be maintained on starvation ration.

A woman can be kidnapped in three ways: by means of force; fraud and as a sequel of mutual love. If a woman, in spite of warning by her relatives, converses with other males will pay hundred copper coins. A man transgressing such a warning also pay a fine of same amount. Repetition of the offence aggravates the punishment causing even the fine of a gold coin. If a woman takes the initiative in approaching a man other than her husband the man will not be liable for kidnapping.

Rules of punishment:

For violation of laws pertaining to state or spiritual matters, the punishment may be up to death - though they may vary according to the gravity of the offence and according to the age, education, caste and other such qualities. Visnu advises the amount of damage done by an offender has been let off for a first offence, he should not be allowed to escape punishment if he offends again; not can the king pardon one who violates his duty. In the case of offender who admits that he uttered objectionable words in ignorance or due to carelessness or due to rivalry also familiarity in cases of abuse he will have half of the actual penalty provided he makes promises not to make the same offence again. While dealing with children, women, the aged

137. Yaj. Smrti. I.368
and ascetics the king has to judge calmly restraining his anger.

Manu proceeds further talking of immunities from corporal punishment, imprisonment, fine, exile, reviling and exclusion. Sattakhalikhita will not allow a Brahmana to be tormented. In case of a brahmana offender punishment allowed will be public disgrace as getting the head shaved thereby removing the tuft, which is necessary for religious sanctity.

The reason for making offenders with indelible signs indicative of their sins in the five great offences is to give publicity so that the offender is excluded from association with all good persons who can help him in expiatory rites, cut off from his family and society, receives no companion and even dies. But the offender need not be marked indelible with appropriate signs indicative of his offence if appropriate fines are paid and penances are done after a crime.

Mitigation of Punishment:

In dealing with charges against a person it has to be taken into consideration whether the act was accidental or unintentionally done or it was in self-defence. His past record however was taken into consideration.

Partial or total mitigation:

In some cases there can be partial or total mitigation of punishment. Brhaspati maintains that everyone deserving a capital
punishment may be let off on his paying a fine of a hundred gold coins, and one sentenced to mutilation for half of this amount and he who has been sentenced to lose his fingers for a quarter of the amount. If the offender comes from a good family the punishment may be banishment after forfeiture of all property. To deter a brāhmaṇa from offence which leads to capital punishment imprisonment can be imposed.

Several considerations are taken into account before inflicting punishment on an offender. These are:

1. Caste (of the offender)
2. Subject of offence (as in the case of theft, article stolen)
3. Amount (of punishment)
4. Application (of punishment)
5. Pecuniary condition (of the offender)
6. Merits (of the offender)
7. Locale (of the offender)
8. Time (of the offence)
9. The particular offence.

The main purpose behind imposing punishment of a person is deterring the individual from further commitment of crimes; so the first offender must be treated with a mild punishment. If this does not have any effect on him and he continues criminal practices he will be meted out severe punishments.