Chapter II
THE CONCEPT OF LAW AND MORALITY IN BUDDHISM AND HINDUISM

"Cevathâ bhikhave cārikam bahujanasahitâya bahujanasukhâya lokânukâpâya atthaya hitâya sukâya devamanussânam, desetha bhikhave dhammam ādikalyânam majjhekalânam pariyojanaânam satthâm savajjanâm kevalaparipunnam parisuddham brahmacariyam pakasethâ."¹

The Indian concept of dharma as religion is different from the western concept. As a matter of fact, what is morality for the west is religion for India. Dharma, in the sense of morality, is one of the four purusarthas (aims or objectives of a meaningful life) advocated by the Indian thinkers.

The modern term for morality in India is naitikata or adherence to the nities or regulations for a good living. In this sense naitikata is only another name for diplomacy as when it is said "arjavam hi kutilesu na nitih (simplicity towards the crooked is no diplomacy). Thus, there is a variance in the concept of morality from the terminological point of view. Niti and dharma both have a claim for morality, but niti is worldly morality bordering on cleverness and dharma is the real sense of morality bordering on spiritualism.

There has been a steady growth in the concept of dharma. It has taken on a lot of connotation and characteris-
tics along with the growth in Indian civilization. There is the extreme form of dharma in mimamsa where ritualism is identified with religion. Buddhism, on the other hand, supports a rationistic form of morality based on practical world view.

The original conception of Hindu law was almost wholly religious and philosophical. The genesis of this juristic and theological speculation must be sought in the conception of Rta or natural order presided over by the vedic deity varuna.\(^2\)

The aim of law is to reconcile and harmonise the wishes of the individuals who form a society. It disciplines the entire society, for the welfare of mankind. In ancient India, there were two prominent law systems, viz., the Buddhistic and the Hindu, which were quite different in nature. Uniformity of law is the modern development of law of our society. There are various reasons for this diversification of law. Earlier societies mainly depended upon their religious customs. Their outlook was very narrow. Lack of scientific and secular studies of law was also one of the main reasons for this multiformity of law in ancient society. But interestingly both for Buddhism and Hinduism the concept of law and morality has an integral outlook, because it contains a minimum standard of fairness useful in all times and in all society. Specially, the concept of law and morality in
Buddhism is full of love, affection and understanding, not like the law enforced by the modern courts of law. With the growth and development of civilisation law has taken a definite shape and the new idea like condification of law developed in the later period. Both in Hinduism and Buddhism in early period, law and morality overlapped each other.

The relationship between law and morality is one of the important problems of enquiry for a legal philosopher. In earlier societies much importance had been placed upon morality, because it is wider than law. "Life of a Hindu, including that of a king, was a burden more of duties than of rights."\(^3\)

Instead of positive law, morality was regarded as a supreme law of the land because of the divine sanction upon morality. Morality regulates the life of human being in the society. However maintenance of peace was in the hands of the king, so that the king's duty was to award punishment to the wrong-doers. And in this way the king performed his duty as the agent of God as well as the agent of the people in the society. Dhayani says, "Hindu state or king was subservient to dharma. He was only a custodian, executor and servant of the law and had no direct authority to make law, to interpret law."\(^4\)
Hence, in the ancient Indian society both prayascitta and Danda had the equal importance. The king was regarded as sinner if he never performed his duty properly. In ancient India the caste system was very rigid. The society was divided into four castes - the Brahmins (the priestly class), the Ksatriyas (the warrior class), the Vaisyas (the business class), and the Sudras (the lowest or servant class/the so-called untouchables). (In the caste-based society, administration of law was also in keeping with the caste-system.) So, in Hinduism, punishment many a time was softened towards the higher castes and harshened for the lower castes. But in Buddhism there was equality of punishment for all. To adjust with the society, a clear-cut idea of punishment was necessary for them. But Buddha was against the theory of deterrence or retribution in punishment. He believed in expiatory and disciplinary idea of punishment. So much of importance was placed on the evil mind (mens rea) of the wrongdoers.

Both the Hindu and Buddhist legal literature still today do not attract much attention from the legal scholars and lawyers. It is surprising to note that such rich legal systems like Hindu and Buddhist legal systems have not received the closest attention from the modern legal scholars. It, in a sense, is a national disgrace that we are not using such a rich and old Indian legal literature.
A proper understanding of the Hindu and Buddhist legal literature would help us in avoiding so much of social tensions and feuds. Whereas it is undoubtedly true that the Hindu caste system is at the root of many social evils and injustices, yet the spirit behind the system definitely observes an academic inquiry. It also can further coherence among segments of people. Also a proper study of the Hindu and Buddhist legal systems which might not be quite so legal in the modern sense of the term will be very rewarding in so far as it will help us be more acquainted with our past as also with a great many things that are quite prevalent in family laws at the present.

But unfortunately we take pride in studying the English and Roman literature. It is not to hesitate the English or Roman legal history; they are surely great. But we, after all, have some responsibility to unravel the increases of our own legal history. Jurisprudential ideas are essentially the Roman origin. Ancient Indian legal ideas are completely different from the Jurisprudential ideas of the West. Though Hindu religion is the dominant religion of Indian, but the legal ideas of Mughal and Britishers are followed in everywhere and our country. Hindu law has its own originality. So Hindu law may be an exception of the Anglo-sexan rule of law. But the superstition in Hindu law is one of the biggest hazard in this afford.
In India the Vedas are the original source of law. But Vedic laws are the positive law, it is just a moral injunction. However law took a definite shape in the Smriti period. As remarked by Dr. Sarkar, "The juristic writings of the authors of the Smritis attained a great degree of perfection at a very early date." In Smriti period possibly the conflicting texts had been harmonized. In this way a liberal view had taken during the Smriti period. During this period most importance has been placed upon "reason". The conflicting ideas of laws which were more reasonable were readily accepted. Custom is also regarded as an essential ingredient of Indian law. Various customs like local customs, family customs etc. were recognised by the law-givers. In this way self-satisfaction was also regarded as the source of law in India.

In Buddhism the three branches of Buddhist faith regulate their own code of conduct for themselves. The Vinaya rules were modified from time to time, according to their own convenience and suitability of their own ideology. Mahayana Buddhism regarded Buddha as a divine being. Similarly the Hinayana Buddhism concentrated their energy in realising Nirvana. In this way the Tantrayana Buddhism regarded Buddha, full of love and compassion, so there is nothing wrong in taking wine and women. So according to their own faith, various Buddhist branches fixed their own
law and religious code of conduct. Buddhism always avoided severe punishments. The highest punishment in Buddhism is the expulsion of the delinquent monk from the Sangha. Surprisingly, Buddha did not specify rules towards layman or the common followers of Buddhism, only he has mentioned some social code for the lay followers of Buddhism.

Both Hindu and Buddhist law regarded that observance of sacred law leads to the salvation from this world, and its disobedience leads to misery. Sources of both the law revealed from God or some supernatural sources which is superior to the king. High sense of duty among the people for observance of sacred law is a remarkable event in the world.

Mimamsa Shastra of Hindus and the Patimukkha Suttra of Buddhism is one of the best example of logical consistency of ancient Indian laws. The Mimamsa system of Indian philosophy is famous for its exegesis. It means inquiry or investigation. The main objective of the Mimamsa system is to establish the authority of the Vedas and to make out that the Vedas teach rituals. As dharma used to govern the lives of individuals in a big way - including litigation - Mimamsa has a great importance for any scholar of law. As Dr. Radhakrishnan has
aptly pointed out "The scriptures which govern the daily life of the Hindu require to be interpreted in accordance with the mimamsa rules. Modern Hindu law is considerably influenced by the Mimamsa system."

Of course the notion of law and justice in India is entirely different from that of the Western countries, because in early periods Indian law was looked with reverence and its validity was unquestionable. The 'ethical element', 'duty norms in the society', 'Karma phala', and the path of Bhakti makes the Indian law entirely different from its western counterpart. The rule of law is another important aspect of Indian law. Repentance and confessions were also regarded as one of the way of reducing crimes.

Though law morality and religion overlapped each other, the great sage Jaimini in his Mimamsa Shastra made a clear distinction between the obligatory idea of law and non-obligatory ideas of law. So, sages of ancient India made a clear difference between the positive law and the morality in the Austinian sense of law. Interpretation of law or mimamsa is as old as a civilization. Mimamsa divided the Vedic laws into two divisions, one is religious sanction and the other is penal sanction. Later on a clear line of distinction was made by both the systems of Dayabhaga and
Mitakshara. Hindu law itself was a process of assimilation and arose for self-necessity. Upto the British period, Hindu law was alive. Some people argue that both Hindu and Buddhist laws are static and lack the capacity of growth. But it is not at all true, because until now both Buddhism and Hinduism are making their own personal laws to meet the various social circumstances. So both Hindu and Buddhist laws still today are also living laws in our country. It is not the legislation, which help to continue both Buddhist and Hindu laws. So, customs and usages are helping in continuing the sacred laws of Hindus and Buddhist. "Custom is frequently the embodiment of those principles which have commended themselves to national consciousness as principles of justice and public utility."

During British period also, Hindus were allowed to govern themselves by their own personal laws like, successions, inheritance, marriage, religious institutions and caste. During this period specially Hindu laws were harmonised and modified to meet the new social changes and interpreted accordingly. English judges introduced some new principles also whenever they had decided the cases. Like Roman law, both Hindu and Buddhist laws have no authentic history. Our history about ancient Indian laws is based on uncertainty. Apart from these difficulties, English judges
gave much importance in the Mimamsa, rule of interpretation of law. In Buddhism, Buddha emphasises upon moral character and ideal life. Disputes regarding any rule or regulation were solved by the Sangha, like members of the communities or representatives of village or the localities in Hinduism. In many cases, Buddhist law did not ignore the Hindu rules of interpretation. Though some ritualistic check was there, Buddhist of ancient India had some reservation to follow the laws of Manu, as they were based on orthodox Hinduism. But they had no reservation to follow the rules of Yajnavalkya and Mitakshara rules, as they were based on humanity. That is why Buddhist king followed many Hindu rules and regulations which were based on liberty and humanity. Many books written after the Buddhist period, in India, present the same picture of law as it was in the early Hindu period. No special change had taken place during Buddhist period, though some minor Buddhist rules were firmly established in the later period.

It is interesting to note that, though Muslim rulers of Medieval period were untenable towards Hinduism and Buddhism, yet they did not interfere the personal laws of Hindus and Buddhists. During that period, the Zamindars had a direct relation with the rajyats and the Zamindars had their own courts. Many disputes were solved by the village communities. It was often seen that Akbar, the noblest king of Mughal dynasty, many times followed the Hindu laws, instead of
following Muslim laws. Hindu pandits, assisted in settling the disputes, specially in civil matters. The documentary evidence regarding the functioning of Hindu law in Mughal period is very limited, the only source available is the "Todaramala's vyavahara saukhyas" which was written by "Todaramal" a minister of Akbar's period.

Law and Morality: Morality is an evergreen concept in every society. In every civilized society, the establishment of morality is a continuing process.

"When state came into being, it picked up those rules which were important from the society's point of view and the observance of which could be secured by it. The state put its own sanction behind these rules and enforced them." So it is not possible to separate law from morals and morals from law. The result of moral crisis in law may lead to barbarism in the society. Though both Hinduism and Buddhism gave much importance in establishing morality in the society, still today discrimination in caste, sex, status etc. are very much there. From the ancient period, it was realised by the social thinkers that both law and morality are inseparable. So both law and morality are essential ingredients of social engineering.
Morality means some norms based on virtuousness, rightness, good conduct etc. In ancient India, both law and morality were administered in the name of Dharma, because, during that period there was no distinction between law, morality and religion. Law, morality and religion overlapped each other. So in ancient India the duty of the king was to safeguard the dharma. Morality or the Dharma was the principal idea of law. Indian concept of morality arose from the core of Indian culture and society, not out of fear or reward. Morality regulated the entire Indian society, whether rich or poor, powerful or ordinary people. The concept of ahimsa is an evergreen idea for the Indian society, and it involves high moral ideas, which is propounded many Indian philosophers like Buddha, Gandhi, etc.

Concept of morality was so high in ancient India that moral and religious obligation was regarded the supreme obligation in comparison with the legal obligations. Throughout the ages, in Hindu and Buddhist legal history, there was not even a single instance, where law was based on command in Austinian sense. Indian law throughout the ages was based on moral ideas because during these days, the law makers and law interpreters were the risis (saints) and not the kings. In comparison with the modern Indian moral ideals, in ancient India, sanction behind the moral ideas and moral duties was
more strong. Only in the nineteenth century, positivist neglected the essence of morals in law, ignoring the recognition of morals in law by all ancient civilization. Of course in the present century, the essence of morality in the law is being re-established. In the present society morality is getting an important place because lack of morality in law and administration is one of the main reasons of revolution. So, the aim of morals is the establishment of proper administration in the society. In modern society morality acts as restriction and in some cases source of legislation while enacting the laws. In modern days also morality has so much influence that life of every member of society is passing smoothly without the intervention of law. Morality is playing an important role in both the international politics and law also.

Concept of morality in Buddhism: Buddha dealt with morality more systematically than with law. In comparison with Hinduism, Buddhist concept of morality was more systematic and concise. Buddha had taken some special measures to tackle the ego sentiment of general people. Buddha suggested to his disciples and lay devotees to practise "Sila" to purify one's personality. In ancient times law, morality and religion overlapped each other. So, morality had its own source in
both law and religion. That is why there was no clear cut
division between law and morality. So in ancient India most
of the human conduct was determined by morals, not by laws.
People in every time and in every society are addicted to
pleasure, ignoring the realities of life. Ordinary people are
the victims of natural desire. So, Buddhist practice of Sila
is an essential requirement to deal with this natural enemy.
According to Buddhism there is only one way to remove this
natural enemy, that is practice of "Sila". In Visudhimagga,
a Buddhist text, the concept of Sila has been nicely described
for the followers of Buddhism. In the Visuddhimagga the
Buddha had explained the Sila with the following two Slokas,
as to how the people are confronted with the various problems
of life, and how one can remove the problems of life. The
person who is following the path of Sila, is free from all
these bondages. The Visuddhimagga has quoted from Samyutta-
mikaya (1.13):

"anto jata bahi jata jataya jatifa paja,
tam tam gotama pucchi ko imam bijataye jatem.
sila patithayya nako sapajno cittam papenca bhavayam,
atapi vipako bhikkhu so imam bijataye jatem."

Sila has been divided into nine heads -

1. Pancha Sila
2. Attha Sila
1. **Pancha Sila**

Pancha Sila was prescribed by the Buddha for both monks and layman, but the only difference is that a lay-devotee can take part in sexual activities. Strict restrictions were imposed upon monks in this regard.

The five precepts or pancha silas are -

(a) Refraining from killing (panatapata virati)

(b) Refraining from stealing (Adinasadana virati)

(c) Refraining from sexual misdeeds (Kamesu miccha cara virati)

(d) Refraining from telling lie (masavadavirati)

(e) Refraining from taking intoxicants (Saranevaya majyappamada tiha virati).

It removes physical, vocal and moral misdeeds accordingly, e.g., the first three remove the physical mis-
deeds, the fourth one removes the vocal misdeeds and the last one is the restriction upon both mind and body.

2. Attha Sila

Attha Sila or the eight moral precepts are prescribed for monks as well as the lay devotees to purify both body and mind. After successful performance of pancha sila, a man can perform the other three precepts. The other three precepts are - (a) Refraining from untimely meal (vikala bhojana virati), (b) Refraining from dance, music and vulgar show (Nacca gita vadita visuka dasana virati), (c) Refraining from the use of garland, perfumes and other cosmetics (mala-ganda-vilepana-vibhujusatthanaka virati).

3. Mangala Sila

Mangala silas are those silas, which are beneficial in nature for the entire society and morally appreciable. They are, friendship or good relationship with the virtuous and noble men. Good behaviour to others, realising and understanding four noble truths, soft behaviour and truthfulness.
4. Digambara Sila

Buddha had advised to his disciples to worship various directions like east, west, south, north, upper and lower symbolically. The parents represent the eastern clime, the teachers represent the southern clime, the sons and wife represent the western clime and the northern clime for the friends and relatives. The lower clime is the direction of the workers, and the upper clime represents the Brahmans and recluses. This type of worship helps in maintaining the social balance and harmony in the society.

5. Indriya Sambhara Sila

The six senses of human body and mind are called indriyas. They are the eye, ear, nose, tongue, body and mind and their objects are respectively visible object, audible, odorous, sapid tangible and identical object. Sense organs are one kind of enemy for an ordinary person. Attachment, lust, etc. arises, when the sense organs have contact with the objects. Ordinary people take delight from these objects, and that is the root cause of suffering. Those persons who can control their own sense organs never suffer from the attachment of ordinary objects.
6. Santosa Sila

Buddha advised his disciples to remain happy with whatever amount of things they got in the ordinary course of life. Because the greater is the desire, the greater will be the unhappiness and dissatisfaction. So minimisation of desire is the way of happiness. Hence, Buddha suggested to his disciples to minimise their desires.

7. Ajivaparisuddhi Sila

Ajivaparisuddhi is the good conduct of a person in earning his livelihood in a dignified and noble way without committing any harm to other persons. There are many ways where a person may earn his livelihood affecting other people; for example, Kuhana, Lapana, Nipesikata, Namittikata, Labhena labha, Kansakuta, Manakuta, Tulakata, etc. So, Kuhana is the way of attacking other people by using sweet words. Nipesikata means earning livelihood by using harsh and rough words. Lapana is another way of earning livelihood by cheating, or using fraudulent words.

8. Dasa Silas

Dasa silas or the ten moral precepts are followed by those persons who have left the household life and lead the
life of novice or monk. Apart from the attha sila or eight moral precepts, the remaining two silas are -

(a) Refraining from the high and lofty beds (Uccassayana mahasayana virati)

(b) Refraining from receiving silver and gold (Jatarpas rajastapatigahana virati).

The idea behind these two moral precepts refraining from the bodily comforts as well as refraining from the habit of taking both silver and gold is to make the monk bear rough life and learn contentment.

Apart from that, for a lay devotee or a householder another ten moral precepts are also available. They are - Dana, Sila, Bhavana, Apacayana, Veyyavacca, Patti Dana - pattamumodma, Dhamma savana, Dhammadesana and Ditthi-uju-karana.

9. Patimokkha sambara Sila: Various rules are available in patimokkha for both monks and nuns. It is the main part of Vinaya pitaka. Patimokkha consists of two parts. One is Bhikkhu patimokkha and the other is Bhikkhuni patimokkha. There are two hundred and twenty seven rules in Bhikkhu patimokkha and they are grouped into eight sections. The eight sections are -
1. Parajika
2. Sanghadisesa
3. Aniyata
4. Missaggiya
5. Pacittiya
6. Patidesniya
7. Sekhiya
8. Adhikarana Samatha.

"There are five things leading to lust which are called in the Discipline of the Noble one a "chain" and a "bond". What are the five?

Forms perceptible to the eye, desirable, agreeable, pleasant, attractive forms that are accompanied by lust and cause delight. Sounds of the same kind perceptible to the ear. Odours of the same kind perceptible to the nose. Tastes of the same kind perceptible to the tongue. Substances of the same kind perceptible to the body by touch. These five things predisposing to passion are called in the Discipline of the Noble one a "chain" and a "bond". And these five things predisposing to lust, vasettha, do the Brahmanas versed in the Three Vedas cling to, they are infatuated by them, guilty of them, see not the danger of them, know not how unreliable they are, and so enjoy them."
Apart from the concept of sila, Buddha advised his disciples to beware of the five things which cause birth and rebirth in the world. We reproduce below an interesting discourse on the concept of Sila, or about an ideal person. This shows how people felt in ancient India.

"Gotama the recluse holds himself aloof from causing injury to seeds or plants. He takes but one meal a day, not eating at night, refraining from food after house (after midday).

He refrains from being a spectator at shows at fairs, with nautch, dances, singing and music.

He abstains from wearing, adorning or ornamenting himself with garlands, scents and unguents.

He abstains from the use of large and lofty beds.

He abstains from accepting silver or gold.

He abstains from accepting uncooked grain.

He abstains from accepting raw meat.

He abstains from accepting bondmen or bond women.

He abstains from accepting sheep or goats.
He abstains from accepting fowls or swine.

He abstains from accepting elephants, cattle, horses and mares.

He abstains from accepting cultivated fields or waste.

He abstains from acting as a go-between or messenger.

He abstains from buying or selling.

He abstains from cheating with scales or measures.

He abstains from the crooked ways of bribery, cheating, and fraud.

He abstains from maiming, murder, putting in bonds, highway robbery, dacoity and violence.

Such are the things, breathen, which an unconverted man, when speaking in praise of the Tathagata, might say.  

In Bhikkhuni patimokkha there are altogether three hundred and eleven rules and it is divided into seven parts. According to patimokkha rules both monks and nuns have to celebrate their "Upasatha" ceremony, and confess their misdeeds on the day of fourteenth and also in the full moon day of every month. So it is one of the ways of expiation in a very simple way in the assembly of Buddhist monks. All the relevant rules are generally recited in the assembly of monks. A monk or a
nun is bound to follow the rules whole heartedly and such whole heartedly following rules are called Patimokkha Sambara Sila.

The Upasatha ceremony of the Buddhists can be compared with the confession ceremony of the Catholic Christians. Confession is the public act of assurance to the Church of one's sincere repentance. This is supposed to expiate sins.

The functions of sila is not strictly regulated by law, but it is regulated by morals, and sila is the determining factor, whether an action is moral or immoral. So, by performing Sila one should be free from all the immoral actions, and develop moral actions like Alobha, Amoha etc. There are some other associates also which function together with Silas. They are Saddha, Sati, Viriya, Hiri, otappa, etc.

(a) Saddha: Saddha inspired people for higher realisation of Dharma. It purify the dirty mind of person. It helps a man to clean himself from all the evils of this world. So, it is one of the way of purification of mind.

(b) Sati: Sati is also one of the psychic factors which create an awareness to a person. Through this psychic factor a person realises some mental conditions like enjoyment, compassion, mental strength, etc.
(c) Viriya: Viriya is also one kind of psychic factor and it creates mental strength and it arises during a person's mental depression, unhappiness, etc.

(d) Hiri: Hiri always helps in the development of right understanding. It condemns the immoral actions. So a person feels bad to do an immoral action.

(e) Otappas: By developing this psychic factor a person feels ashamed to do some socially immoral action. It is freeing oneself from all kinds of shameful activities.

Buddhist concept of Sila is one of the most interesting and relevant ideas for the entire mankind. Perhaps no religious system has developed such a pure idea of morality so systematically like Buddhism. As observed earlier, there was no difference between law and morality in Buddhism. So the idea of sila was very much relevant during those days. And it is relevant in the present day society also for the purification of the society. As it is not possible to regulate all human conduct by law, some of them have to be regulated by morals only.

"If a Bhikkhu should desire, Brethren, that he should be victorious over (spiritual) danger and dismay, that neither danger nor dismay should ever overcome him, that he
should master and subdue every danger and dismay, let him then fulfill all righteousness, let him be devoted to that quietude of heart which springs from within, let him not drive back the ecstasy of contemplation, let him look through things, let him be much alone.  

"If a Bhikkhu should desire, brethren by the destruction of the great evils (Asavas), by himself and even in this very world, to know and realize and attain to Arhatship, to emancipation of heart, and emancipation of mind, let him then fulfill all righteousness, let him be devoted to that quietude of heart which springs from within, let him not drive back the ecstasy of contemplation, let him look through things, let him be much alone."  

Such are the lofty ideals envisaged in Buddhism. Sila is the nucleus, the backbone, almost everything of Buddhist concept of morality.

Crime and penal justice in Hinduism

In ancient India both Hinduism and Buddhism believed in removing the sin from the society. Hence, so much of importance was given towards that end. Hence, criminal administration got less importance in comparison with the religions administration or the religious sanctions. Of
course, in ancient period there was no clear cut division between sin and crime, as it stands today. Actions which were regarded as contrary to religion, in later period were regarded as sinful acts. However with the passing of time religious sanctions are regarded as static concept whereas the penal and criminal laws are regarded as a dynamic concept. In every society crime and criminal activities arise with the dissatisfaction of the society. In Hindu society, crime arises due to dissatisfaction in the varna system of Hindus, though there are many other reasons also. Instances are available where both Kshatriya and Sudra people directly or indirectly destroyed the “Yajna” by stealing flowers, fruit, etc. and sometimes destroyed the whole “Yajna” performed by the Brahmins in ancient period. The Brahmins tried to destroy the rights of the other caste, on the other hand the people of other caste also tried to establish their rights. So, the natural result was the conflicts between Brahmin and non-Brahmin in the society.

It is interesting to note change in the pattern of punishment in the Hindu society along with the change of time. Earlier, severe punishments were imposed upon Brahmins; but afterwards, severe punishments were imposed upon Sudras. It is an admitted fact that in every society, in ancient period, punishment was more severe in comparison with modern
society. So in ancient Hindu society also punishment was very severe towards the offenders, perhaps, to terrify the offenders. Heavy penalties were imposed upon the Sudras during those days. Corporal punishments were common to those people. According to some scholars, punishments towards Sudras were severe due to many reasons. The Aryans who conquered the non-Aryans, in the later period who were regarded as Sudras, were involved in many conspiracies against the Aryans, who became the rulers or priests of the state. So, severe punishment was necessary to suppress the treason and felonies committed by the Sudras. Though severe corporal punishments were imposed upon Sudras, yet in case of religious sanction severe punishments were always imposed upon the Brahmins, because Brahmins in those days, even today also are one of the most prestigious classes of the society. That is why they were wellversed in all Shastras and knew the nature of laws. So, where only eight "dhenu" prayscitta's were imposed upon Sudras, contrary to that sixteen dhenu prayscittas were imposed upon Vaishya and thirty two "dhenu" prayscitta were imposed upon Kshatriyas and sixty four "dhenu" prayscittas were imposed upon Brahmins. So ancient Indian law givers were not biased towards upper class people. This type of discriminatory treatments were for the benefit of the society.
However the low-caste people reacted sharply against this discriminatory treatment and the influence of Buddhism and Jainism had shaken the entire Brahmancial culture. Specially the Buddhists were against the caste-system. So, the discriminatory legal system of Hindus was badly challenged by the influence of Buddhism. A new secular penal system was the urge of that period. That is why, Yajnavalkya Smriti, which was composed when Buddhism was flourishing in the country, is moral and liberal in comparison with Manu Smriti. A distinction was made between spiritual offences and secular offences. For spiritual offences religious sanction was available for the wrongdoer. But for the secular offences punishment or Danda was prescribed for the wrongdoers. Punishment like mutilation of limbs, death sentences, fine, imprisonment etc. were the common mode of punishment in those days. In ancient Hindu society, there was no discrimination between an offence done by the king, or an offence done by an ordinary person. Instances are available where a king had done some offence and for which he was punished more severely in comparison with ordinary people. It is quite contrary to the maxim that the king can do no wrong. For the Hindus, nobody was above law.

Hindu penal system gave much importance on the purification of mind of the wrongdoer. If a person committed
murder, after undergoing the secular punishment, he had to undergo another kind of punishment which was according to shastric law known as "prayascitta" or the purification of mind, which is still continuing in our society. But the only difference is that in ancient times a person, after getting the secular punishment was bound to undergo the "prayascitta". But in the present time, a person is not bound to undergo the "prayascitta" system.

Thus ancient Hindu system of penal justice recognised two systems of punishment. One was secular and the other was religious form of punishment.

The ancient Hindu system of religious sanction or "prayascitta" is an unique system of India, and it is today also a unique system for the entire world. Because there is no other system of secular and religious law, which can compare with the Hindu system of prayascitta. In Indian society, it is interesting enough that whoever commits an offence, he may try to escape from secular punishment, but he will never try to escape from the religious sanction or prayascitta, because religious sanction never imposes severe punishment upon the wrongdoer, and the other reason is, the wrongdoer through prayascitta purifies his body and mind for this world and for the other world also. The prayascitta
system satisfies the social, moral and religious sentiments of the society. It also roots out sins from the society.

Crime and penal justice in Buddhism

During the time of Buddhism, the supremacy of Vedic culture, and Brahmanism had been badly challenged by the oppressed people. The old system of penal justice was very harsh towards the Sudras. So to adjust with the new society and socio-religious philosophy, Buddha prescribed some new form of penal codes for the monks, and to the lay devotees of Buddhism. Buddhist kings of ancient India followed the new penal codes, prescribed by the Buddha, and they were very successful in this regard. But the storehouse of the Buddhist legal system "Vinaya Piṭaka" has provided a very little source of lawyers' law. The main aim of the Vinaya piṭaka is to lead the human being for gradual purification of his body and mind. For the Buddhist the concept of crime and punishment is an ordinary matter, because of the prevailing harmonious social system in those days. That is why for the Buddhist monks, the highest punishment was expulsion from the Sangha. Buddhist kings also awarded very mild punishments for the ordinary citizens. The Buddhist kings also followed the Vinaya rules, as it is evident in the Ashokan minor edicts at Sanchi, Sarnath and Kausambi, we find that Ashoka issued orders to
expell the troublesome monks from the Sangha. Buddha advised his disciples to maintain social harmony, otherwise some kind of troubles like bodily pain, disturbed mind, destruction of gold etc. would fall upon them. He did not prescribe any severe punishment for the wrongdoers for practical use. His punishment was not for this world, rather for the other world. So "Dharmapada mentions murder as the major offence, for which punishment is the torture in hell."  

On the other hand from practical legal point of view, it is interesting to note that, the highest penalty for heinous crimes, for a member of the Sangha, was the expulsion of the delinquent monk from the Sangha. Sangha is one of the most important organisations, after the Buddha and Dharma propounded by the Buddha. According to Buddhist law "The Sangha was, from a Juristic point of view, the corporate person in whom property was vested, and while no bhikkhu had legal property rights."  

So, where property right was not at all recognized, there hardly arose any question of criminality, except some natural offences like sex-offences or any other natural offences of this type. In the Sangha, always some types of democratic rights were recognised, for example, right to speech, right to life etc. were the most fundamental rights.
recognized in those days also. The peculiarities of the administration of the Sangha was communistic in their outlook, though it was a religious organization. On the other hand, Buddha laid down many instructions as available in various Buddhist scriptures which guide the rulers of the states to rule the state, according to the rule of law and like Manu the great Hindu law-giver he had also suggested the rulers to act righteously. According to Buddha, the king who administered justice according to Dharma is the right king for the society.

Buddha had a friendly relation with many kings of his time like Bimbisara of Magadha and Pasanjit of Kosala etc. The concept of righteousness, though it was thoroughly recognised by Hinduism also, was Buddha's contribution to political administration of our country.

In various stories of Buddhist literature he upheld the ideal Govt. and its legal policy for the administration of the state. Buddha emphasised on the economic growth of the society, because economy has a direct relationship with the causation of crime of a state. Interestingly, Buddha advised his friendly kings that instead of giving punishments, the king should remove the economic difficulties of the economic offenders. Because lack of economy is the main
reason of his economic offences like, theft, robbery etc. Of course, Buddha was not in favour of removing punishment, but the root cause of the crime should be removed from the society.

According to Buddha retributive and deterrent method of punishment, hardened the criminals mind, and they become more violent for the entire society as also to the law enforcing authority. Hence, the Buddhist concept of law is more humanistic and borders on morality.
1. Mahavaggo, I.2.5

The meaning of this celebrated deshana of Buddha could be:

"O mendicants, you take to the path of saints for the welfare of many, for the happiness of many and for the sympathy of the people and for the prosperity, goodness and happiness of Gods and men. O mendicants, you spread the light of this Samtiness which is good in the beginning, in the middle and also at the end and which is meaningful, sonorous, full and perfect."

2. Sarkar, U.C., Epoches in Hindu Legal History, p. 2

3. Ibid., p. 3


5. Sarkar, U.C., op.cit., p. 3

6. Madadevan T.M.P., Invitation to Indian Philosophy, Arnold Heinemann, New Delhi, p. 239


8. Tripathi, B.N.M., Jurisprudence - Legal Theory, p. 186

9. Ibid., p. 125

11. Ibid., vol. II, pp. 5, 6


13. cf. Sraddha van labhate jnanam.

Bhagavat gita, IV.39


16. Bairat edict, p. 226