Chapter III

BUDDHIST CONCEPT OF CRIME AND PUNISHMENT

Crime can be differently defined. "In general, it can be said to mean the violation of a right when considered in reference to the evil tendency of such violation, as regards the community at large."¹

In England crimes were divided into three divisions: treason, felonies and misdemeanours. Treason means the offences which were committed against the king. Felony means those offences which were punishable with death, and misdemeanour means the small offences.

In India pure municipal law originated with Hinduism. The Danda-nitti and Artha (royal) Shastre are example of it. In Jataka also the term "Artha" has been used in connection with one government. According to Mr. K.P. Jayaswal "it is not unlikely that some of the early works on artha-sastra existed at the time of the Jatakas."² The Dharma and Artha laws overlapped each other, and the Artha law followed many principles of Dharma law. For example, no one shall be punished in case of doubt. The king may punish after proper investigation of the case etc. The rise of Buddhism, reasserted the need of Artha laws, because the Buddhists are beyond the control of Dharma law (Hindu Dharma Law).
Apart from the Artha (Royal) law, the secular municipal laws were called the Vyavahara laws. Both the Dharma and Vyavahara laws originate from Veda. But the only difference is, the Vyavahara law is mainly concerned with the political governance and the king. Vyavahara laws can be termed as Dandaniti also.

The Buddhist concept of crime is not different from that of Hinduism. Buddha was mainly concerned with the Dharma laws. Though he had many royal friends in his life, he did not try to influence the governance of the king. Buddha was a religious teacher. The ultimate aim of his Dharma was to achieve Nirvana. Probably the Artha and Vyavaharika system of laws of Hinduism continued in the Buddhist period also. K.P. Jayaswal, the eminent indologist observes "In the time of the Buddha the royal judge is called the Vyavaharika. He is called so, I think also in Ashoka's inscription distinguishes between Vyavahara and vidhi. The former, no doubt, means municipal law and the latter Dharma. At the same time dharma is occasionally used to denote law generally in Buddha literature and also in Kautilya."³

Now, it is clear that, the Vyavaharika law means the king's law. Though, Buddha was mainly concerned with his personal law, the Vyavaharika law was also regarded as
the highest law of the land. There were many kings throughout the history of Buddhism who followed the Buddhist principle, and they were the royal patrons of Buddhism. For example, Ashoka was one of the great royal patrons of Buddhism. Only because of his efforts, Buddhism occupied a prominent place, not only in India, but in the entire world. As mentioned earlier that Hindu system of Artha and Vyavahara laws, continued during the Buddhist period also, so only the missionary works of Ashoka’s are available in the Buddhist literature. For example, Ashoka appointed religious officers in different provinces to maintain pious life by the people. So moral living was insisted on during the reign of Ashoka. Kaniska’s reign is also a landmark in Buddhist history. In this way, though throughout the history of Buddhism, many rulers followed Buddhism as their state religion, yet they did not develop any Artha (Royal) or Vyavahara laws. The same Hindu system of Vyavahara laws continued. So, the Vyavahara laws of Buddhism are not available to us to use as a piece of evidence of Buddhist Vyavahara laws. The Buddhist customary laws are the only source of Buddhist concept of crime and punishment. But the customary laws are applicable to Buddhist monks only. Buddhist Vyavaharika laws roughly corresponding to the Hindu Vyavaharika laws, are available in the Vinaya pitaka. The patimukkha sutta which is the storehouse of Buddhist law was written in a method of present day
case law. But the patimokkha rules are not enforceable by the king or the royal courts. Contrary to that, it was enforceable only by the Buddhist Sangha. That is why we can say that the Buddhist laws are not Artha (royal) or Vyavahar laws, and we have to analyse the Buddhist concept of crime and punishments from the religious point of view. Various examples of minor crimes to major crimes are enlisted in the patimokkha. We have already mentioned in the previous chapters that the Patimokkha Sutta can be divided into two divisions: Bhikkhu patimokkha and Bhikkhuni patimokkha. Offences committed by the monks are again classified according to their seriousness. The difference between the Vyavahara law and the Dhamma law is, for the severe offences the punishments are capital punishments, and for the violation of Dhamma, whatever may be the type of offence, the punishment is expulsion from the Sangha.

The worst offences are known as parajika offences, and the punishment of the parajika offences is the expulsion of the delinquent monk from the Sangha. The serious offences are lack of continence, theft, murder or abetment of murder and exaggeration of one's power to perform miracles etc. The Sangha had the power to punish a wrongdoer, because it was the compulsion of the time and society, which witnessed a remarkable change in the social structure. In the Buddhist
religious list both sins and crimes were enumerated; both the secular and non-secular offences were enumerated in the list. The Buddhist way of punishments are not only a way of purification, but it is a mode of punishing the wrongdoer. For a monk in some cases, it was possible to avoid secular punishments, but it was impossible to avoid the religious sanction. But one basic difference with the Hindu religion is that a person, who becomes the member of a Sangha ceases to own any property. The articles used by the Bhikkhus were also regarded as the corporate property of the Sangha. "From the Juristic points of view the Sangha is a corporate person in whom the property was vested, and Bhikkhu had no legal right to the property." 

From this point of view we can draw inference that a clear distinction was there between the Buddhist and Hindu criminal Jurisprudence. Probably, Buddhism inherited some method or organization system from ancient tribals, and it has also some influence upon the Buddhist community, specially on the Buddhist Sangha. From the various pali literature it is evident that the king of Kosala and the king of Magadha were his personal friends and his disciples. So in many times, he was always in constant touch with the kings, and the kings also took advice in case of Administration. But he did not develop any secular code like the code of Manu,
the code of Yajnavalkya etc. which are still available in the Hindu system of laws. Though there was no secular Buddhist code of conduct, tradition and custom took an important role in fixing the laws. Absurd punishments were totally unknown to the ancient Indian Jurists. For example, trial of animals, punishment of animals etc. were common in the Western countries.

The concept of *Mens rea* or guilty mind was known to Indian Jurist since the ancient times, but the concept of *Mens rea* is a totally new thing for the Western countries. Punishment of animals are the best example of it. In the Medieval period and later in the 18th century, classical school of criminology had developed in England. The penal philosophy of this period is based on hedonism. The aim of this theory is to maintain the balance between pleasure and pain, i.e., to maintain the balance between crime and punishment. However, in India, no such type of theory developed in early period. Our ancestors were only concerned with the purification of mind of the common people as well as the mind of a wrongdoer. But surprisingly, today in our society, we never give any importance in the purification of mind of a wrongdoer. The result is, now-a-days a person himself acts as a protector of a society, and he may act as a member of a group of organised criminals. For example, a white collar criminal sometimes acts as a protector of the society, and sometimes he himself acts as a criminal. The assimilation of criminal and immoral
activities are dangerous for the entire society. The system of purification of mind in the Buddhism, and prayscit+a in Hinduism have an important role to play in our society.

The next serious offence according to Buddhism, after the parajika offence is Sanghadisesa, and the punishment of Sanghadisesa is temporary suspension of the offending monks. The delinquent monk can be readmitted in the Sangha after proper enquiry by twenty monks. There are all total thirteen offences mentioned in the Sanghadisesa. The offences arise mainly from the relationship between monks and women, construction of hermitage, false accusations etc. The crime rate is not very high in Buddhist societies. The probable cause could be that self and selfishness are thoroughly looked down upon in Buddhism. Crime rates are always high in a society where much emphasis is given in individual wealth and black money. In Buddhism, however, there is a religious sanction for only a delinquent monk. Sanction is required to control the human instinct. Human instinct can only be controlled through some injunctions. Mental defectiveness is one of the reason of crime, and most of the criminals are mentally defective. Probably, the defectiveness comes from the id, which is also a psychological problem. According to Freud, mind is the composition of id, ego and super-ego. Generally criminal behaviour is the urge of id, or the
instinct, but only because of the super-ego, it is not possible to do the crime. Due to lack of super ego crime is more common in the lower socio-economic society. Though in Buddhism, individuality is completely denied, probably, they maintain their ego in the sense that they are the most purified men in the society. Lack of super-ego is mostly common among the non-religious persons. Interestingly, though Buddha classified various offences and their punishments, the crime rate among the Buddhist community were much lower. Now-a-days, lack of religious training may be one of the causes of criminality. Religion always emphasises importance on morality. Religious feeling creates discipline among the people. So, in a religious society crime rates are much lower than the non-religious society. Religion is one of the main instruments in preventing crime in the society. The Buddhist Sanghas not only spread the religious message, there are some of the most important places where moral trainings are given to the monks for the higher achievements of spirituality. Through this institution, delinquent monks take the correct path. Buddha realised that deterrent way of punishment is not the only way to reform the delinquent monks.

The same thing is realised by the social reformer like Lenin. Lenin replied how criminals are dealt with in the communist countries, and how only the mixture of deterrent
and reformative way is the only way of removing the crime from the society, because new criminal techniques are common among the general criminals. Professional criminals and white collar criminals are the new problem of our society. In order to deal with these criminals. With a view to removing the criminality, Lenin had said, "This will be done by the armed people itself as simply and readily as any craws of civilized people, even in modern society, parts pair of combatants or does not allow a woman to be outraged. Secondly, we know that the fundamental social cause of excesses which consist in violating the rules of social life is the exploitation of the masses, their want and their poverty with the removal of this chief cause, excesses will inevitably begin to witer away."  

Buddha did not take much interest about a specific theory of law like Manu and Yajnavalkya, because Buddha knew that once the idea of Buddhism was established in the society, the criminal activities will wither away. Buddha paid special attention to reform the caste-based Hindu system of laws. The country was well-acquainted with the caste-based system of punishments. The code of Manu was a source of controversy among the lower caste people. Instead of law as a subject of crime, it creates controversy after controversy for its ferocious nature of casteism. Buddha, not only as a religious
teacher but as a social reformer, changed the whole concept of caste based punishments of Hindu religion. In this way, he succeeded in giving a code of punishments which is based on equality. Like our present day case law, Buddha classified the offence, and laid down systematically the form of punishments. He prescribed certain punishments for the Buddhist community, which is above any controversy. He completely denied various reasons of ill-treated punishments towards the Sudra, or the lower caste Hindus which were formulated by the various smritikars like Manu, Yajnavalkya, Brihaspati, Parasara etc. Buddha formulated the code, without any fear or favour, sometimes contradicting the whole Hindu system of laws. Buddha, boldly cured the injury done to the society by the Hindu system of laws. He prescribed uniform laws for the Buddhist monks, and in this way removed the social drawbacks. Even eminent Brahmin, like Asvaghosha etc. revolted against the class of Brahmin superiority by birth and caste system. He was one of the most ancient social reformer who arranged the whole social system and saved the society from high-caste dominion. His punishments were milder forms of punishments. The highest punishment was expulsion from the Sangha. For the next serious offence, the punishment was suspension from the Sangha. The punishment of suspension from the Sangha also was reviewed by at least twenty monks.
The next comparatively less serious offences are called Aniyata. For Aniyata offence, circumstantial evidence is necessary to ascertain the facts. Circumstantial evidence has a great value in criminal law. Buddha realised the necessity of circumstantial evidence long before the Christian era. This is being realised today by the modern criminologists. It is generally observed that "witnesses may lie but circumstances do not." The only difference with circumstantial evidence, presumptions etc. with the Buddhist religious law and the secular law is, in the secular law, person who was previously convicted of theft, or arrested before for some other reason, is presumed to be a thief, but in the Buddhist customary law, until and unless, it is proved that the person concerned has done something wrong, no action is taken against him. Like circumstantial evidence, presumption etc. divine trial was also very popular in the ancient Indian society. In the Buddhist law, the idea of divine trial is unknown. The purpose of the divine trial was to get the real proof of the incident, painting out the good and had effect of the ordeals. Of course, some minor form of ordeals was admissible in the later Buddhism. Some kind of Hindu forms of ordeals are available still in our society, specially in the villages. Explaining the ordeals as a form of punishments and its preparation, Damayanti Doon gogi observed:

"As to the preparations necessary for undergoing an
ordeal also there were specific rules. Before sunrise the
person prepared to go through the ordeal had to be summoned.
Such a person had to fast from the previous day. He had to
be bathed and clad in a wet cloth and made to go through the
ordeal before the court presided by the king and the
Brahmanas.

The ordeal by the balance was intended for women,
children, old men, blind and lame persons, the Brahmanas and
the diseased. Fire and water ordeals were for the Sudras
as also poison of the quality of seven barley grains. So
also in transactions of less than a thousand panas there was
to be no ordeal of fire, poison, or weighing. However,
persons anxious to prove their innocence could always go
through ordeals in case of treason, or other heinous crimes.6

Thus a peculiar method was adopted by our ancient to
determine the guilt. However, ancient Buddhists did not
adopt the ordeal. They mainly depended upon the circumstan-
cial evidence of the offence.

The other Buddhist offence mentioned in the Buddhist
patimokkha is called Missaggiiya-pacittiya, or unauthorised
use of another's articles. In modern sense, we can term it
as criminal misappropriation. But the difference between
ancient and modern offence is, in ancient Buddhist law, the
delinquent monk had to confess about his misappropriation, and preyscitta must be performed for his misdeeds, and also he had to return the article. But in the Indian penal code for the offence of criminal misappropriation, punishment is specifically mentioned. Most of the cases of misappropriation were regarding wearing clothes. Only a few cases were there regarding begging bowls. The aim of the provision Nissaggiya pacittiya is that the Bhikkhus should maintain proper discipline and that they have to maintain their life within limit. They should not take things for any unauthorised purposes. Because it may create hindrance in the way of attaining the highest Buddhist goal, Nirvana. On the other hand, if somebody donated something in the name of the Sangha that could be accepted and maintained carefully. Misappropriation of things by Bhikkhus is against the moral conduct and culture of Buddhist Sangha.

Buddhist laws are, in a sense, some kind of moral code of conduct, though Buddha prescribed punishments for murder, theft etc. He prescribed punishment for some minor offences also which are today in our society and which we do not regard as crimes. For example, one of the chapters in the patimokkha is pacittiya. It enumerates ninety-two offences, relating to some minor acts. For example, insecticide, lack of respect towards Buddha, Dharma and Sangha etc.
Buddhism regarded a failure or refusal on the part of a monk to live up to the standard of conduct deemed binding on the rest of the Buddhist community constituted an offence; because the Dharma Shastras of Buddhism laid down some cultural and religious rites to be observed by all the Buddhist monks. And non-observance of it degraded the monk and it was considered a hindrance in attaining the highest Buddhist goal, Nirvana.

Apart from that, small offences like insecticide, lack of respect towards Buddha, Dharma and Sangha etc. are also regarded as sins. Buddhism paid special respect towards the discipline of the Sangha and also the moral obligation towards the religion and society. The modern criminal law draws a special line between the offences - what is punishable and what is not punishable. But Buddhism did not draw any distinction between what is punishable and what is non-punishable offence. According to it insecticide is also not a small offence, because in a non-vegetarian society they were the propounder of non-violence. Now-a-days all crimes are regarded as immoral, but all the immoral acts are not crimes. In this way now-a-days insecticide is not regarded as crime, and also disrespect towards Buddha, Dharma and Sangha also are not regarded as crimes. For spiritual people, specially for the Buddhists, good acts were regarded as Dharma. Any act in contradiction with dharma was adharma, and for the act of adharma there was penance or prayascitta.
and punishment. So, there is a vast difference between modern concept of offence, and ancient concept of offence. That is why, they regarded insecticide also as an offence. "That action is sin or crime which takes the individual away from the Divinity resting within him."7

Buddhism regarded non-violence as the way of achieving divinity. In this way paying proper regard towards Buddha, Dharma and Sangha is also the way of achieving divinity on the part of a monk. So, Buddhist concept of law is clearly different from the modern concept of law.

The patidesaniya section of offences has a vast difference from our modern concept of criminal law. Patidesaniya section is also related with some moral injunction and punishment prescribed for the violation of these moral injunctions. The delinquent monk must control his greediness which is the root of all evils. If a particular monk takes sufficient food which has not been directly offered to him then he commits a patidesaniya offence. A formal confession regarding the offence is required before the Sangha. Buddhism did not regard these types of offences as a crime. It was regarded as a law of wrongs. It is similar with the English concept of law of Torts, but monetary compensation did not arise here. The important difference between the English concept of law of Torts and Buddhist
customary law is, in law of torts, payment of money is necessary, but in Buddhist customary laws, confession, repentance etc. are sufficient as the offence of the delinquent monk has already been committed. Of course, for some serious offences the highest punishment was expulsion of the delinquent monk from the Sangha.

But a completely different picture is seen in case of Hindu law. In Hindu law punishment of crimes occupies a more important position than compensation for wrongs or confession, repentance etc. "Neither theft, nor violence, nor any other form of serious injury to person or property could be condemned on more payment of compensation to the party injured but it was regarded as the duty of the king to punish the culprit for his offence against the law. It may, therefore, be safely pronounced that the penal law of the Hindus was the law of crimes in the strict sense, and the law of torts occupied a comparatively subordinate and less important position in that system."

Though in Hindu law, secular penal laws occupied a more prominent place, but like Buddhism, Hindu customary laws also occupied important place in the society; because the wrongdoer had to purify himself through prayascitta for himself and for the satisfaction of the Hindu society. We
Do not know whether Buddha imposed any secular penal provisions for the wrongdoers in the Buddhist dominated kingdom, like Nanu, Yajnavalkya etc. who imposed secular laws in the Hindu dominated kingdom in their times, and which were followed in the later period also.

It is seen that Buddhism condemned the crime, because it is against the morality and it is a hindrance in achieving the highest Buddhist goal, the Nirvana; but Hinduism gave much importance in the security, and tranquillity of the people at large. Of course, they did not ignore the purification of minds of the wrongdoers through prayascitta. It is interesting to note that Hindu law-givers many times tried to commercialise the idea of Hindu customary laws by imposing pecuniary value, or value of a cow in coins. But in Buddhism, commercialisation of Buddhist customary laws was not allowed by the Buddha himself. Of course, commercialisation of laws by way of compensation was allowed in English law also in the name of Tort action. Ancient Indian laws overlapped with religion. So, unlike English laws, Indian laws were not direct. "For our ancients there was only Dharma and Adharma. Acting contrary to Dharma would amount to committing a sin or a crime, and in both cases there was penance and punishments."9

Law was considered as a branch of Dharma. According to Medhatithi, dharma stands for duty, which is contrary to
adharma. So, dharma means an aggregate of religious, moral, social and legal duty. Buddhist personal law regarded law as a moral injunction which was based on religion. Buddhist personal law was generally not concerned with the social and legal duties of a monk.

The Sekhiya, section of Patimokkha sutta, gives only some instructions to the monks in their daily life, for example, how a monk should enter into a village or a town, way of taking food etc. The rules of law and rules of religion and morality were dealt with one and in the same place. Buddhism regarded that the matters of morality and religion have the reward in the present and the next life also. Buddhism believed that there are some interlinking of religious, ethical and legal principles, and it is also not denied that it is deeply rooted in the society, because the social norms arose out of the need of the society. In Buddhism, the sources of law are custom and morality. So, all the Buddhist laws had their origin in the heart of the people, and they originated from the people. People accepted the moral injunctions. The refined moral injunctions were added by the Buddha, and later on these were collected in the Vinaya pitaka.

"The code of morality of the Buddhist is mainly founded on the Buddha's word, while the Buddha himself repeatedly says
that the Dharma is ancient and passed on by the risis or holy men from age to age. The rules of conduct for the monks and nuns are definite and are given in the Book of Discipline.10

Buddha did not claim that he established a new religion. He himself confessed that the Dharma was ancient and he was just prescribing some norms to follow the Dharma, and urged the people to give up superstitious rites and ceremonies. He preached the dharma for the welfare and happiness of mankind. In the Sakhiya section of patimokkha sutta, some instructions are prescribed for the daily life and activities of a monk; but it is interesting to note that Buddhist law is strictly concerned with the criminal intent of an action or maha san or guilty mind of human beings. Morality takes an important position in Buddhist Vinaya. Buddhist law is a kind of moral sanction and injunction. A clear distinction was made between intentional act and an unintentional act. Apart from the intentional and unintentional mind, he gave importance to some other sides also, for example negligence. In negligence both intentional and unintentional act is absent, but negligence is there. So, special attention was paid so that a monk was not negligent in his work, while entering into a village, taking food etc.

These types of negligent acts were not as severely punished as those committed with the intention and knowledge
of causing any damage. Only formal confessions were sufficient in such cases.

To prevent the crime or the wrong doings was one of the important functions of both the state and the society. Earlier moral injunctions, concept of sin etc. arose to prevent the crime in the society. Probably, Buddha was in a dilemma regarding the need of municipal law or the positive law. However, his customary laws are very scientific in their approach. Tradition, custom and necessity of time, took an important role in fixing the traditional laws. Hindus fix their customary laws, e.g., how much prayasttta they were to impose for killing a cow or stealing etc. In this way, Buddhists also fixed their own customary laws, what will be the punishment for killing, stealing, etc.

The Adhikarina Samath or the means of settling disputes within the sangha is also a moral injunction, so that dispute may not arise in future. So, in the strict sense, we cannot say that it is a criminal law, and in this way it is very difficult to study the Buddhist customary laws as Buddhist Jurisprudence. Because the Buddhist religious books, which are the principal sources of Buddhist laws do not confine themselves to the Juristic rules only. Besides, moral and religious injunctions and also the strict legal ideas are overlapping with each other in these books. No
clear line of demarcation was maintained in the customary laws and the municipal laws. Some secular laws or injunctions are also mixed up with the customary laws.

The notion of criminal jurisprudence is basically of the Western science and not of Eastern science. It had its origin in Roman law. The preconceived ideas of Roman laws are not suited to the ideas of Indian laws and society, specially to the sober ideas of Buddhism. So, there is every possibility of dissimilarities of Buddhist concept of crime and punishments with the western concept of crime and punishments. We have to study the Buddhist Jurisprudence as a comparative study with its western counterparts but not as a similar branch of law.

The establishment of Buddhist code of conduct was for the regulation of the conduct of the monks and also to reconcile and harmonise the desire of the human being. The conditions of different societies or the various stages of its development may not be similar. So, the dissimilarity of western laws with the Indian laws is quite possible. Of course, the scientific development of western Jurisprudence began earlier in comparison with the Indian laws. The difficulties of studying Buddhist jurisprudence, specially the Buddhist criminal Jurisprudence, are many. The first one is Buddhist law. It did not confine itself only in the analysis of jurisprudence, but it overlapped with human conduct, moral,
religious injunctions etc. Buddha was not serious regarding the strict principle of laws. "It was, of course, not possible for the Buddha to lay down all the rules in anticipation of what the unrighteous monks might do to evade or misinterpret them. Hence, the Vinaya pitaka, as it stands today, is a growth of centuries out of the basic rules formulated by the teacher himself."\(^\text{11}\)

So, to establish the strict principle of criminal Jurisprudence, the legal rules must be separated from the religious views, but not completely detached or isolated from religion. Of course in modern days also, it seems that in case of marriage, some secular and religious laws are mixed up, for purpose of the convenience of the society.

The next difficulty regarding it is, that we are already biased by the idea of western criminal Jurisprudence, specially with the Roman criminal jurisprudence. We always look from one point of view regarding jurisprudence ignoring the idea of eastern concept of jurisprudence. So, one should not have preconceived notions regarding the concept of Jurisprudence. Roman jurisprudence is not the only jurisprudence in the world. Apart from that, Indian concept of jurisprudence is more ancient and more human, also. Mayne, the great Indologist, himself confessed, "Hindu law, has the oldest pedigree of any known system of Jurisprudence."\(^\text{12}\)
Indian Jurists have an inferiority complex regarding the Indian Jurisprudence, that the great Indian law givers Manu, Yajnavalkya, Buddha etc. just prescribed some ethical norms, and not rules in the strict sense, but the western jurist are preconceived with their own ideas of Jurisprudence and ignored the Indian concept of Jurisprudence. According to them, the contribution of Indian Jurist is nothing in the development of legal history and Jurisprudence.

Our forefathers were mainly concerned with the violation of moral and religious rules, and it was also within the limit of the society. For example, the problem of white collar criminality is a modern problem. It was unknown to the ancient law givers. If the problem had arisen in those days also, they might handle the problem within the limit of the society. In modern times it is established that crime is caused by a combination of various circumstances. There may not be just a single cause of a crime. It may have many more causes. In early societies, many devices of crime were unknown to the criminals. The circumstances were more harmonious. But in modern society a child has to face various circumstances from its very beginning. Competition, conflict etc. are common to a child in modern days. Now-a-days a person acts as the guardian of the society as well as a criminal of the society. For example, the white collar criminality is well known to all persons.
Individual competition is one of the most important factors in case of crime causation. Because, individual wealth means increase of reputation in the society, and poverty means disgrace in the society.

All the reasons of crime-causations are not new. Individual competition, conflict etc. are not new problems. Even wearing the Buddhist traditional dress Civara, Devadatta, one of the main competitors of Buddha, had done many criminal activities. So, causation of crime is not a modern problem. It is as old as our society. The only difference of crime in ancient society from that in the modern society is that in ancient period, many techniques of crimes were unknown to the criminals. But the techniques of crime causation is not unknown to modern criminals. The story of dreaded criminal Angulimal is well known to all. Only the Buddha had taken him to the proper way of life.

The period of Buddhism was known as the period of peace and prosperity. Of course, a conflict arose between the Buddhist and Hindus regarding the establishment of their own culture. Cultural conflict is also one of the reasons of crime causation. Many modern criminologists believe that many other factors are also responsible in case of crime causation. For example, Geographical, Biological etc. According to some criminologists, crime against property is
common in winter, and in the same way certain crimes are common in mountain areas. But, like the modern criminologists, Buddha did not mention anywhere that geographical, biological reasons are responsible for crime causation. Only the mind of a person is responsible for his good or evil acts. According to him, man is the composition of mind and matter. The entire philosophical work of Buddha, specially the Abhidharma pitaka dealt with the mind of the people. Only the mind of the human being is the subject matter of Buddhist philosophy, because only the pure mind can attain the highest goal of Buddhism, Nirvana. The composition of Vinaya pitaka itself had some social reasons that the unlawful activities in the absence of Buddha may again arise in the society. It is recorded in the cullavagga that a theragga called Subhadda, express happiness at the death of Buddha.

"Since they were treated as so many school boys by the master, who often admonished them for their unbecoming conduct, they would now be free to do as they thought fit without let or hindrance." 14

The remark of Subhadda is also an indication that, there was every possibility of violation of the norms which were specially prescribed for monks and also for the lay devotees.
Though much effort was taken by the Buddhist monks and the master himself so that Buddhist code of conduct remained intact in future also, but it is not possible to prevent the social unrest and its influence upon criminality.

The development of Hinayana, Mahayana and Tantreyana is a case in point in this regard. The strict moral sanctions and injunctions prescribed by the Buddha were ignored by the Buddhist monks. According to them, the Buddha was full of love and compassion, and there was nothing wrong, if they enjoyed freely wine and women, because the Buddha, who was full of love and compassion would forgive them.

"Corrupt practices like the use of five ma-karas, i.e., words beginning with the letter 'ma' such as madya (wine), mamsa (flesh), matsya (fish), mudra (woman) and maithuna (sexual intercourse) were encouraged and practised even by men who were supposed to be leading a religious life." 15

Vikramasila was the centre of Tantric faith, and soon, it spread to Orissa, Bengal and Assam. The Tantric faith is very much strong still in the three states Assam, Bengal and Orissa, and perhaps it was the direct influence of Hindu Tantricism.

In our view also, it was the direct influence of Hindu Tantraism, because it is natural that Hindu philosophy
believed in Dharma, Artha, Kama and Moksha, as the ultimate aims or purusartha. But Buddhist philosophy, which believed only in Nirvana. Diversion of their attention to wine and women is not believable.

But according to some author, Tantricism is basically the Buddhist philosophy in later period. "It is possible to declare, without fear of contradiction, that the Buddhists were the first to introduce the Tantras into their religion, and that the Hindus borrowed them from the Buddhists in later times, and that it is idle to say that later Buddhism was an outcome of Saivism." The main difference between the Hindu and the Buddhist Tantrism is, Hinduism believed in Shakti as a divine power, but Buddhism believed in Prajna (knowledge, wisdom). Only in the later period, the divine idea of Tantrayana had taken an ugly turn and they thought that wine and woman is the only way of salvation. With the development of new ideas and thought, the causation of crime had also taken a definite shape. Monks were not only taking pleasure from wine and women, but they left the habit of practising the Buddhist rules and regulations, specially mentioned in the patimokkha sutta. Throughout the history of Buddhism, crime rates were higher during the period of Tantrayana.

Apart from the developments of crime causation in various period Buddhisms, the other important factor in
reducing the crime is the concept of Karmaphala or the fruit of action. The law of karma is an integral part of both Hindu and Buddhist philosophy. Both in Buddhism and Hinduism, if a sinner does not undergo Prayscitta (in Hinduism) and confession or repentance before the assembly (in Buddhism) then he has to suffer in hell and he would be born in the next life bearing the fruit of evil deeds. Karma ordinarily denotes good and evil actions. It is a general belief that in secular penal justice, the offender may escape from the eye of law. And if he escaped from the eye of law, society cannot do anything to him. But in case of Karmaphala, or according to the theory of Karmaphala, he has to suffer in his next birth, or it may be in the present birth also. The Indian society is based on religion. So the theory of Karmaphala has a great deterrent effect in the society. The punishments of secular penal sanctions are visible, but the punishments of Karma vipaka are in the hands of God, and it is invisible. But it is seen that in comparison with secular penology the theory of Karma vipaka has a more deterrent effect.

Buddhist criminal Jurisprudence in comparison with Hindu criminal Jurisprudence is more liberal. In case of any violation of the religious or customary laws of Buddhism, the highest punishment was expulsion from the Sangha. But the crime rate in Buddhist society is much lower than that in any
other religious society. One of the important aspects in this regard is that in Buddhism, the concept of individuality is completely denied. Owning of private property itself is regarded as a crime, because greed is the root of all the human evils.

Public justice always required punishments. Society, through some agency punish the wrongdoer. While discussing the concept of punishment in modern times, more emphasis is given to physical punishments. But in ancient period, specially in the religious cases, maximum importance was given to mental pain. That is why confession, repentance, prayscitta etc. were more common in ancient Indian society. Buddhism is basically concerned with the mental punishments. The punishment systems involved two ideas; one is to satisfy the society by punishing the wrongdoer, physically or mentally, and the other one is prevention of offences, that in case of any violation of law, severe punishment might be awarded to criminals. Those punishments could be the physical or mental punishments.

In modern period, there are various theories of punishments, for example, Retributive, Deterrent, Preventive, Reformative, Expiatory etc. According to the Retributive theory, "A blow for a blow" is the natural urge of a human being. The idea behind the theory is "revenge". Buddha was
not at all concerned with this type of ideas of punishments. In fact, in modern society also the theory has no relevance in our society.

According to Deterrent theory, other persons will be deterred from doing any crime, if we impose severe punishments upon the wrongdoer. Today also in Muslim countries severe punishments are very common to deter the criminals from doing any unlawful activities. Buddhism did not regard deterrent method of punishments are fruitful to our society.

Another important method of punishment is preventive method. Preventive method, for example, imprisonment, banishments etc. are common in our society. As Buddhism only believes in confession, repentance etc. so, it did not find place in Buddhist Jurisprudence.

The main object of the reformative theory is to reform the criminals from the wrong-doings so that he never realised that he is a burden on the society and in this way, he can return to the mainstream of the society as an ideal citizen. The modern system like probation, parole etc. are the way of reformative system of punishments. In ancient India both Kautilya, the great Hindu law giver and Buddha had given maximum importance in reformative theory. Though scientific reformation was unknown to them, but Buddha prescribed
Another important theory of punishment is expiatory theory. This theory is of Indian origin. The main idea of this theory is purification of the criminals. Confession and repentance is the only punishment for a wrongdoer. The system of prayascitta is very much common still today in the Indian society. Of course, there is a difference between religious sanction or the expiation and penal sanction. The theory is mainly concerned with the violation of moral codes and conduct.

The entire Buddhist system of crime and punishment is based mainly upon the expiatory theory. Buddha believed in confession and repentance, he did not believe in physical punishments. Buddha understood punishments in a purely humanistic and optimistic manner. Perhaps because of this gentle approach towards religion society, crime, punishments etc., the age of Buddhism was the golden age of Indian art, culture, philosophy etc. There is a vast difference between punishment and expiation. "Primarily punishment is imposed from without and is therefore, involuntary whereas expiation is undertaken as a result of inspiration from within and is a voluntary process."
The human being must be afraid not of crime alone but also of sin. The concept of prayaschitta in Hinduism means the self-inflicted punishment. In Buddhism also the meaning is same, though the procedure is different. Origin of sin is generally derived from religion, but modern secular or municipal laws derived from religion, as well as it was derived from the need of the people and time also.

"The Artha-sastras of Kautilya revealed a code of law proper, purely secular, with the express provisions that the royal law could supercede the Dharma law."18

In this way, at a time the royal law superceded the Dharma law. The tendency of superceding Dharma law had started from the period of Yajnavalkya. The royal law admitted that crime and criminals not only harmed the interest of the Dharma law alone, but they harmed the interest of the state. The duty of the state is not to allow the crime to be committed. Both of the fear of God and fear of royal law only deter the criminals from doing crimes. The aim of the dharma law was to purify the heart of the criminals, but the aim of the royal law was to maintain the balance between pleasure and pain, like in utilitarian of Bentham. The punishments always involve pain. In case of dharma punishments it is mental pain and incase of royal punishment it is both
physical and mental pains. The punishment is justified by both state and the society.

In conclusion, the Buddhist concept of law might not in all respect be a perfect law, but it is comparable with the other system of laws. We cannot deny the merit of the Buddhist Jurisprudence.

The Buddhists were guided by the higher idea of Dharma for the permanent welfare of the human beings. Logical consistency is one of the important ideas of Buddhist Jurisprudence. Buddha himself was a logical person and he always justified his position against all possible controversies. He always emphasised that the law should not be unreasonable and detrimental to the interest of the entire Buddhist community. The Buddhist community accepted the norms, because according to it the inspiration flows from the function of the highest authority the Buddha. Of course for a practising lawyer, it may not be fruitful, but for a student of Jurisprudence, it is essential to know the nature of the Buddhist Jurisprudence.

Buddhist criminology and penology may not be a lawyer’s law, and it is also not suggested that we should follow the Buddhist law, for every purpose; but the study of the ancient Buddhist criminology and penology, helps us to
realize that our present system of criminology and penology has many drawbacks. It goes without saying that pure jurisprudence and religious jurisprudence will be different. As a religious jurisprudence, Buddhist jurisprudence may fall short of compactness and positivity. But if we take into consideration the fact that after all laws are for men and men are not for laws and also the fact that religion is one of the profoundest experiences of mankind - then we cannot ignore religious jurisprudence. It may not be used in all and sundry cases, but in the understanding of the basic issues involved in making, amending, enforcing and repealing of laws the religious aspect of society can hardly be forgotten.
Notes and References

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