

UNDERSTANDING THE NATURE AND VARIETIES OF PUNISHMENT IN ANCIENT LEGAL SYSTEM

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ABSTRACT

In India, the concept of punishments has been prescribed and enshrined in ancient mythological texts and artefacts like the *Mahabharat*, *Vishnu Puran*, *Ramayana*, and *Durga Saptshiti*, as well as in legal codes and law books of the modern era like the Constitution of India, the Indian Penal Code, 1860, the Code of Criminal Procedure, 1973, and the Bhartiya Nyaya Sanhita Bill, 2023. With the advent of time and progress in society, the relevance and application of theories of punishment have evolved considerably. Punishment, or *Danda*, in ancient Bharat, was usually sanctioned by the king with a bench of ministers and legal officials in the backend. It was the duty of the king to protect his people and punish those who violated the *dharma*, or rule of law. The duties of the king are discussed in the *Manava-Dharamasastra*, also known as the Manusmriti or Code of Manu, which also provides for types of punishments. It introduced criminal

jurisprudence in the country and a comprehensive code of ordinances related to law and order.

Aim and Objectives

- To study in brief about concept of punishment in ancient legal system
- To evaluate the contents of *Kautilya Arthashastra*, *Manusmriti* and other books w.s.r. to medical jurisprudence.

Materials and Methods

- The materials were compiled from traditional Ayurvedic texts, modern science textbooks, published articles, research journals, and the internet.

INTRODUCTION

People were always in danger of being attacked by one another in the past when there was no criminal law to regulate society. The young, the inexperienced, and the elderly were readily subdued and defeated by the strong and the mighty. However, when societies became more unified and diverse standards were put into use, violations were punished with fines, the death penalty, exile, mutilation, and other harsh measures. Fines, forfeiture, property confiscation, and life imprisonment all became frequent types of punishment meted out for nearly all offences around the world with the growth of the humanitarian aspect in criminal philosophy. Manu stated that it is the responsibility of the King to uphold peace and humanity in his domain and that he might use *danda* as a tool to do justice to the accused party and to punish the guilty person. The *Rajadharma* law was created to prevent the King from making an arbitrary decision with this power to punish someone and according to *Manu*, king should only punish those who deserve it after precisely determining the proclivity, the time, and the location, and after carefully weighing the criminal's capacity and the gravity of the crime.

DEFINITION OF “Danda”

- In the Vedas, the term "*Danda*" is mentioned, but its clear manifestation as a form of judicial administration does not appear. The usage of the term "*Danda*" in this context begins with the *Brahmana* texts. Over time, during the period of *Sutras*, the development of various aspects of punishment took place.
- According to Gautama^[1], the word "*Danda*" is derived from "*dam*" (to control). Even the king is referred to as "*Danda*" because he is a controller. The king himself becomes subject to punishment for violating the law.
- In the '*Yajnavalkya Smriti*'^[2], punishment is defined as a part of the state, and it is synonymous with righteousness (*Dharma*). Punishment is indeed the law. Punishment maintains control over all living beings. It is the duty of the king to utilize punishment according to the scriptures (*Shashtras*), otherwise, both the king and his nation destroy. Punishment leads people onto the path of truth and justice.

The Stages of punishment

- According to the *Smritis*, there are various stages of punishment. According to *Manu*^[3], there are four stages of punishment:

वाग्दंडं प्रथमं कुर्याद्विद्वदंडं तदनन्तरम् ।

तृतीयं धदंडं तु वधदंडमतः परम् ।

(M.S- 8/129)

- Sadharana Danda* or Warning (वाग्दण्ड) : Involves verbally criticizing the offender
- Dhikkarana* or Rebuke (धिग्दण्ड) : involves reproaching and insulting the offender
- Artha Danda* or Fine (धनदण्ड)
- Mrityu Danda* or death sentence (वधदण्ड)

Place of punishment

The *Smritis* mention various places where punishment can be administered.

दश स्थानानि दंडस्य मनुः स्वायंभुवोऽब्रवीत् ।

त्रिषु वर्णेषु यानि स्युरक्षतो ब्राह्मणो ब्रजेत् ।

उपस्थमुदरं जिह्वा हस्तौ पादौ च पंचनन् ।

चक्षुः नासा च कर्णौ च धनं देहस्तर्थाव च ।

(M.S- 8.124- 125)

Manu^[4] lists ten such places where punishment can be inflicted, namely: the tongue, hand, foot, stomach, ear, nose, eye, genitals, wealth, and the entire body. Punishment can be administered on any of these places according to the severity of the offense committed by the criminal.

Different types of punishment

Ancient scriptures mention various types of punishments corresponding to the severity of the offense. These punishments can generally be categorized into two main types:

- Artha Danda* (Fine)
- Vrihat Danda* (Severe Punishments from beating to death penalty)

Artha Danda (Fine)

The most prevalent punishment mentioned in the scriptures is *Artha Danda*, or fine.

Artha Danda is of three types

- (1) *Pratham Sahas*
- (2) *Madhyam Sahas*
- (3) *Uttam Sahas*.

According to Manu^[5]

पणाना द्वे शते सार्धे प्रथमः साहसः स्मृतः ।

मध्यमः पंच विज्ञेयः सहस्रत्वेव चोत्तमः । मनु-8. 138.

- *Pratham Sahas* ranges from 1 *Pana* to 250 *Panas*
- *Madhyam Sahas* ranges from 250 to 500 *Panas*
- *Uttam Sahas* ranges from 500 to 1000 *Panas*.

However, *Yajnavalkya* disagrees with *Manu's* classification.

According to Yajnavalkya^[6]

साशीति पण साहस्रो दंड उत्तम साहसः ।

तदर्धेः मध्यमः प्रोक्त स्तदर्धमधमः स्मृतः । याज्ञ-1.366.

- *Pratham Sahas* ranges up to 270 *Panas*,
- *Madhyam Sahas* ranges up to 540 *Panas*
- *Uttam Sahas* ranges up to 1000 *Panas*.

According to Narada^[7]

- The minimum limit for *Pratham Sahas Danda* is 100 *Panas*
- The minimum limit for *Madhyam Sahas Danda* is 500 *Panas*
- The minimum limit for *Uttam Sahas Danda*, it is 1000 *Panas*.

Vrihat Danda**Seizure of Property**

- The second type of punishment mentioned in the *Smritis* is the confiscation of property. According to *Manu*, if a person belonging to any of the other three *Varnas*^[8] besides the *Brahmins*, commits one of the great crime, or if a merchant sells the property of a king that falls under the king's exclusive authority out of greed, or if someone engages in trade of a prohibited commodity, or if a judge accepts a bribe, then the punishment of confiscation of property is prescribed for such offenses.

- According to Yajnavalkya^[9], the entire property of a person who takes a bribe shall be confiscated. If a person violates the rules of a society, caste, or organization, then their entire property shall be confiscated, and they shall be banished from the country.
- According to *Narada*^[10], if a person commits rape with a woman or a girl belonging to a higher class, then their entire property shall be confiscated, and they shall also be given the death penalty.

Beating or to whip

- According to *Manu*^[11], if a woman, a child, an insane or a sick person cannot bear the punishment or imprisonment inflicted by the king, then they shall be subjected to whipping or beating with sticks, bamboo, or a rope. Moreover, only poor and sick individuals shall be subjected to whipping or beating. The length of the whip or stick should be equal to the length of the root of a fig tree, which is about five fingers long.
- According to *Manu*^[12], if a woman makes a girl into a prostitute, she shall receive a punishment of 200 *Panas* and shall be subjected to ten beatings and these beatings shall be with a rope.
- *Manu*^[13] has stated that for minor offenses, women, children, lunatics, or sick individuals should be beaten with a rope, stick, or whip. This helps in reforming the offenders. In another context, Manu has stated that if an elderly person, a pregnant woman, or a child defecates or urinates in a public place, they should be admonished/ scolded. It is clearly stated that this admonition serves as a warning for the offender to reform and refrain from committing such offenses in the future.
- According to *Vishnu*, if a woman touches a person of a higher caste during her menstrual period, she shall be subjected to whipping.
- According to *Narada*^[14], if a *Shudra*, or outcaste commits a minor offense against a person of a higher caste, they shall be subjected to whipping. Undisciplined students or those who insult individuals of lower castes shall be subjected to whipping.

Parading on the street

- In the scriptures, there is provision for punishment by parading on the street as well. According to *Manu*^[15], if a woman makes a minor girl into a prostitute, she shall be punished by parading on the street.
- The psychological aspect of parading or conducting a parade of the offender on the street is to publicly shame them before other citizens.

Imprisonment

- According to *Manu*^[16], if a woman, or a *Shudra* is unable to pay a fine, they should be imprisoned and made to perform physical labor *Manu*^[95] specifies that jails should be located on the roadside or in open areas so that passersby may be filled with fear upon seeing them, thereby afraid from committing offenses.
- According to *Yajnavalkya*^[17], if a person does not truthfully and cautiously disclose their name or caste, or if a person pulls a woman's hair, harasses her, or attempts rape, or if someone acquires stolen property from another person, then that person will be punished with imprisonment.
- According to *Narada*^[18], arrests or imprisonment (आसेध) can occur in four ways:

स्थानासेधः कालकृतः प्रवासात्कर्मणस्तथा ।

चतुर्विधः स्यादासेधो नासिद्धस्तं विलङ्घयेत् ॥

(N.S- 1/ 48)

- (1) Local arrest (स्थानासेध): The prohibition of a person from going to a particular place.
- (2) Time Prohibition (कालासेध): The prohibition of performing a particular task for a specified period of time.
- (3) Residence Prohibition (प्रवासासेध): The prohibition of a person from residing in a particular place.
- (4) Prohibition on certain activities (कर्मासेध): The prohibition of performing a specific action.

Daagna (to mark)

- In the *Smritis*, various offenses were marked on the body of the offender. According to *Manu*^[19], a person who commits the crime of rape would have a symbol of the female reproductive organ marked on their forehead. The one indulging in alcohol consumption would have a symbol of a wine goblet marked on their forehead, and the one who kills a Brahmin would have a symbol of a headless corpse marked on their forehead. The aforementioned symbols are to be marked on the forehead of the offender using a hot iron rod.
- According to *Yajnavalkya*^[20], criminals of theft and gambling will have the mark of a dog's paw on their forehead. If a *Brahmin* commits theft, the mark of a dog's paw

will also be placed on his forehead. In the case of rape with a *Chandali*, the symbol of the female reproductive organ will be marked on the offender's forehead.

Amputation (Cutting off parts of body)

- According to *Manu*^[21], a *Shudra* who commits a crime with a particular limb will have that same limb cut off. According to *Manu*, a thief who steals with a particular limb will have that same limb cut off. If a Brahmin or Kshatriya falsely accuses someone, their tongue will be cut off.
- According to *Yajnavalkya*^[22], the thumb of a person selling fake gold or fake meat will be cut off. A woman who gives poison with the intention of murder will have her ears, nose, and lips cut off. Those who criticize or insult the king, as well as those who reveal the king's secrets, will have their tongue cut off. Those who commit rape with the Guru's wife will have their genitals cut off.
- According to *Smritis*, if a *Shudra* commits rape with a woman of a higher caste, his genitals will be cut off. The fingers of someone who kills a cow will be cut off. If a non-Brahmin enters a cowshed, temple, or sacrificial ground wearing shoes, both his feet will be cut off. The fingers of someone who kills a cow will be cut off.

Death penalty (*Mrityu Danda*)

In ancient scriptures, there are two types of death penalties mentioned:

1. Pure Death Penalty (*Shudh Mrityu Danda*)
2. Mixed Death Penalty (*Mishr Mrityu Danda*)

Pure Death Penalty (*Shudh Mrityu Danda*)

- The pure death penalty has two forms:
 1. Usual (अविचित्र): In this the criminal's head is cut off with a sword.
 2. Unusual (विचित्र): In the second form, the offender is killed by plucking out by dogs etc.
- According to *Manu*^[23], pure death penalty is given for the following offenses: If a non-Brahmin commits rape, theft of gold, silver, or fine clothing, theft of more than ten pitchers of grain, theft of a woman, a man, or jewels, breaking into the royal treasury, breaking temples or military arsenals, stealing elephants or chariots, being caught with theft tools, stealing food, corrupting ministers, killing women or children, gambling, marking or wearing the symbol of higher caste by a *Shudra*, *Shudra* receives ordinary death penalty.

Mixed Death Penalty (*Mishr Mrityu Danda*)

- In mixed death penalty, the offender's hands, feet, and other limbs are amputated before being executed.
- According to *Manu*^[24], mixed death penalty is given for the following offenses:
Those goldsmiths who deceive or cheat will have their limbs amputated and then be given death penalty. Those thieves who steal during the night will have their limbs amputated and then be given death penalty.
- The one^[25] who breaks dams or reservoirs shall be drowned as a death penalty, the one who breaks marital relationships shall be burned alive, the one who rapes a protected *Brahmin* woman, being a *Kshatriya* or *Vaishya*, shall be given a mixed death penalty, the one who violates the duties towards her husband shall be made to die by dogs. The government official who misuses public property for his own benefit shall be trampled to death by an elephant. The one who rapes against the will of a girl shall be given the death penalty.

DISCUSSION

The theories of punishment prevalent in ancient India were primarily of a deterrent and retributive nature. These theories were based on the idea that punishment is the only way of social control for crimes committed in the kingdom and that punishments must be vicious, sadistic, and ruthless. Thus, the punishments in ancient India were torturous and barbaric. There was no regard for human life and human rights. People believed that inflicting corporal pain and harm equivalent to what an offender had inflicted on any individual or society was the only way for rehabilitation and the maintenance of law and order.

Although there used to be a king to formulate and implement laws to provide justice, due to the absence of a codified set of sanctions, people were in constant fear of being harmed. Especially, the rights of the weak, young, and women were always compromised, as these sections of society were easily dominated and overpowered by the strong and powerful.

During the ancient Indian period, the caste system was pervasive, and there was a clear distinction made between people of higher and lower castes while imposing punishments. During that time, the powers of a judge were also very limited and kept in check, as the king was supreme. Also, there wasn't a single codified law in the country, which led to the

exploitation of several backward and depressed sections of society who had little to no representation in legislative and administrative functions.

In the modern era, some of the ancient forms of punishment are still prevalent, but saying so, a lot of them have gone through metamorphosis as well. Today, the Indian judiciary is widely guided by the reformatory theory of punishment. The belief that individuals can be transformed with the right treatment has come to dominate the system of punishment. Therefore, theories of punishment prevalent in modern times focus on serving offenders with punishments that are less brutal and more reformative.

CONCLUSION

To conclude, it is pertinent to state that society is comprised of various thoughts, which are enshrined in the theories given by various scholars and penologists of that time. The development of society and changes in its structure are the laws of nature. The concept of punishment originated to punish those who break the laws, but the method and form of punishment have changed over time and space in society. The major reason behind this change is the development of constitutional norms and the enrichment of education in society.

Every theory of punishment is good as well as bad, depending on the structure of society, the person, and the personality of the offender and the offence committed. On comparative evaluation, we also witness that there are countries that haven't changed with time, but a country like Bharat has given importance to the human and constitutional rights of people to make sure that no person is deprived of their basic rights.

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