

## NATURE OF JUSTICE IN ANCIENT INDIA

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Any activity of the individual against the law of society or group would result in an act of crime. Punishment for crime in ancient India not only invoked harm to society but also degradation or loss of social status i.e. caste of the offender and thus made him unworthy of social communication and unfit to perform spiritual acts. From this, one may assume that by the imposition of this punishment the offender was made to realize that for living as a member of the social group to which he belongs, he must honour the established rules.

Though our ancient Indian writers, did not develop a regular science of penology, they were quite aware of the several purposes served by punishment for crimes. The four basic characters of the modern penal law: - retributive, deterrent, preventive and reformative, may be traced in the operation of ancient Indian Judicial system.

### Retributive character of Law

A primitive system is based on the principal of vengeance which was found in a very early stage of society. Since in all ancient societies the *lex talionis* (The law of vengeance) prevailed<sup>1</sup>. Its existence in ancient India cannot be denied. However this law as such was not known to India from Vedic period onwards. The Vedic word *Vairadeya* is interpreted as the retaliation equivalent to the German word *wergild*. But it is doubtful that it was practiced as such in ancient India. *Vairadeya* in ancient India meant compensation which was given to the wronged family by the wrong doer<sup>2</sup>. *Manu* Prescribes a punishment for causing pain to the body or the loss of a limb and also the expenses of curing the person injured and some solution to him<sup>3</sup>. The same view is expressed by *Yajnavalkya* also<sup>4</sup>.

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The retributive nature of law is referred in Mahabharata also. The epic refers to some retributive punishments. According to Yudhisthir, to inflict pain when pained, to take revenge on him who takes revenge, to retaliate when struck and to do harm in return for harm are items of retributive judgment. But it seems that taking the natural growth of the feeling of vengeance, on the part of the wronged person, for the loss which, if materialized, could disrupt all the social order, our ancient Indian writers laid down these regulations which on the one hand could appease the wronged person and on the other could deter the culprits from committing crimes. Thus though the ancient Indian law looked retributive in nature but it was mainly deterrent.

### **Ancient Indian Law: A Deterrent to the Crime**

The end sought to be served by the justice was to protect the society and secure its happiness, so to prevent the people from committing crime. Thus the severe punishment of a criminal serves an example and a warning to all others who might be tempted to tread the path of crime<sup>5</sup>. This was based on the idea of inspiring awe in the minds of the culprits<sup>6</sup>. To deter them from committing crime or from going astray from the path of duty so that the law and order in the society could be maintained. Manu says that it is for the protection of all creatures that Brahma has created out of his own essence the rod of punishment<sup>7</sup>. It alone governs all created being and protects them. It watches over them while they sleep<sup>8</sup>.

The above testimony of Manu reveals that the king should always punish sternly those who commit crimes for ensuring the welfare of the people. Manu once again says that if king failed to punish the offenders unremittingly, the powerful would devour the weak like fish on the pike<sup>9</sup>. Matsya Purana also expresses the same idea very explicitly<sup>10</sup>. Again Manu says that if there had been no terror of punishment one would enjoy the right of ownership of anything. It is Danda which keeps the whole world in order, since we seldom find a guiltless person.<sup>11</sup>

We find the same idea in Mahabharata also. At one place Arjuna says, ".....It is rod of punishment which governs and protects the people, and is awake even when they are asleep....."<sup>12</sup>. So also Bhishma says, "If there had been no punishment in this world the men would oppress each other. Well Yudhisthir, It is from fear of Danda that men do not strike each other."<sup>13</sup>

The same idea is maintained by Kautilya also. According to him punishment when awarded with due consideration, make the people devoted and righteous and becomes productive of wealth and enjoyment. But when the law is kept in



abeyance, it gives rise to such disorder as is described as *Matsyanyaya*; for in the absence of the magistrate the strong will swallow the weak, but under its protection the weak resist the strong.<sup>14</sup> Sukra also lays stress upon the deterrent object of punishment the subject becomes virtuous, does not commit aggression and does not tell a lie.<sup>15</sup>

### **Indian Law: Preventive Also:-**

We can fairly say that the law, in order to secure the welfare of the people must not only be deterrent but should be preventive also. It is strange to find out the same motive of law (Punishing to prevent repetition) in ancient India. But latter Dharmasastra writers seem to have realized the use of lenient punishment as in the harsh rules of retributive and deterrent punishments the accused had either to lose his life or was made useless to the society. We get references in law books which are suggestive of a change in the outlook of the Dharmasastra writers.<sup>16</sup> Brhaspati conjoins the rule that in the case of taking by force women, men, gold, gems, the property of deity or Brahman, the fine shall be equal to the value (of the article) or double the amount stolen shall be exacted, to prevent a repetition (of the crime).<sup>17</sup> Shukra seems to be more definite on this point.<sup>18</sup>

### **Reformative Nature of Indian law**

To ensure the welfare of the entire society, it is necessary that the punishment should be reformatory also. This theory lays utmost emphasis upon the character of the culprit. According to this theory an offender is to be punished not for the sake of crime but in order to reform his character. Laws are made because they are a social necessity as individual is part and parcel of the society he could not be spoiled.

According to Manu the punishment is a sort of surgery in which the patient is not to be got ride of but the patient gets rid of the disease. Yajnavalkya also advises the king to punish with proper consideration of offence, the families, castes, guilds, and the people of the town and country who have deviated from their own duties, and place them in their proper path.<sup>19</sup> Obviously the emphasis has been given to reform the character of the culprit. In Mahabharata also the same sentiment has been expressed when it has been given recommended that the king should reform or correct miscreants' behavior by punishment.<sup>20</sup> Our ancient Indian law givers had laid down to apply *danda* (Punishment) only when the three methods to reform the culprit, viz. *Sama Dana* and *Bheda* fail.<sup>21</sup>



Though Kautilya lays down severe punishment but he also was not against the reform of the culprit. His aim was to curb crimes and he was ready to go to any extent for achieving this aim. He lived at a time which was critical and he was much concerned with the security of the state. Though his intention was simply to end the crime but he could not help resorting to severe punishment.<sup>22</sup> Sukra also advocates reformatory punishment, while he advises the king to punish those who have been vitiated by bad company and teach them good ways of life.

Thus we see that all the chief traits of a welfare judiciary and law of a welfare state are explicitly depicted in the Hindu theory of punishment.

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