Indian Knowledge System and Its Impact on Criminal Laws

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I. INTRODUCTION

Since ancient times, the concept of crime and punishment has been present. It dates back to the origins of human civilization. Crime is an intrinsic idea in human behaviour. In primitive societies, the victim took it upon themselves to administer punishment to the offender as there was no established governing body or authority. This retribution was carried out by techniques of retaliation and revenge, which were influenced by random occurrences and human emotions. Even during the sophisticated RigVedic period, it was stated that the responsibility for punishing a theft lay with the victim themselves. Over time, the act of seeking revenge as an individual was replaced by seeking retribution as a collective. This shift occurred because the man realized that he could not thrive and survive in complete isolation. In order to ensure his own life and existence, it became vital for him to live in groups. In order to function effectively, a group must establish a shared set of values and create a set of guidelines that all members must adhere to. These rules established the acceptable conduct and the course of action to be followed in the event of members' noncompliance. The set of rules and principles that regulated the activities and behavior of the people became known as "Dharma" or law. As civilization advanced, humans recognized that living in society was more advantageous than living in small groups. Organizations that were formed based on blood relatives partially gave way to broader associations known as societies. "Dharma" held significant prominence during the early stages of Indian culture. Every individual was behaving in accordance with the principles of "Dharma", rendering any need for external power to enforce compliance with the law unnecessary. The society was devoid of the malevolent consequences stemming from self-centeredness and the exploitation perpetrated by individuals. Every individual in the society diligently upheld the rights of their fellow members, and violations of these rights were extremely rare or nonexistent. Unfortunately, the utopian stateless society was short-lived. Although society maintained a strong conviction in the effectiveness and usefulness of "Dharma", as well as a fear of God, the real situation increasingly worsened. An occurrence emerged when certain individuals started to exploit and harass the more vulnerable segments of society for their own self-centered purposes. The dominance of the powerful over the vulnerable persisted without any

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decrease. The circumstances compelled the law-abiding individuals to seek a solution. As a consequence, the institution of monarchy was uncovered and the King's power over the community was established, leading to the formation of what is today referred to as the State. The primary objective behind the establishment of the State and the power of the King was to safeguard the well-being and possessions of the populace. To do this, the King implemented a structured mechanism to uphold the law and administer punishment to those who contravened it. Subsequently, this system acquired the designation of "criminal justice system". Although the Indus Valley civilization suggests the existence of a structured society in pre-Vedic India, the emergence of a system of penal justice can only be traced back to the Vedic period, when well-defined laws were instituted. The "Vedas" are the most ancient literary texts that offer elucidations on the ethical guidelines for individuals and the principles that a King must follow.

II. "DHARMA"

The Hindu legal system was integrated into the structure of "Dharma", as elucidated in the "Vedas", "puranas", "Smriti"s, and other pertinent writings. "Dharma", denoting the principles and regulations that govern society, functions as a comprehensive blueprint or overarching strategy for the all-encompassing advancement of individuals and various societal components. The law was acknowledged as a powerful tool essential for safeguarding the rights and freedoms of individuals. If someone's rights or freedoms were violated by another person, the person who was harmed had the chance to seek legal action with the help of the King, regardless of the other person's level of power or authority. The King's power to enforce the law and penalize lawbreakers was seen as the primary motivating factor (sanction) behind the law, capable of inducing unwavering obedience. The Veda functioned as the original and principal basis of "Dharma" in ancient India. The "Dharma" sutras, "Smritis", and "puranas" were important sources. Subsequently, the field of Mimamsa, which focuses on the study of interpretation, and the Nibandhas, which consist of comments and summaries, emerged as supplementary reservoirs of legal knowledge. When there are disagreements between the "Vedas", "Smriti's, and "puranas", the claims expressed in the "Vedas" are considered to be the ultimate authority. The "Vedas" were regarded as having a celestial source. The four "Vedas" are the "Rig Veda, Yajur Veda, Sam Veda, and

Atharva Veda". Wilkins states that the RigVeda is the oldest of the "Vedas". Subsequently, the Yajur-Veda, Sama-Veda, and Atharva-Veda follow in that order[1].

The ""Dharma shastras" played a crucial role in developing the legal regulations and standards that govern all aspects of human conduct. This encompassed both criminal and the civil law. The aforementioned literary works, which discuss authoritative principles in the form of pithy aphorisms, were classified into three distinct categories: "Srauta sutras", "Grihya sutras", and "Dharma sutras". The "Dharma sutras" dealt with issues related to both civil and criminal law. The "Dharma-sutras" authored by eminent jurists of ancient times like "Gautama", "Baudhayana", "Apastamba", "Harita", "Vasista", and "Vishnu" were widely recognized as authoritative. Thus, these "Dharma sutras" might be seen as the foundational texts of the Hindu legal system.

The "Smriti" served as a substantial foundation of Hindu law. The assembly of the "Smritis" bears resemblance to the modern method of codification. The legal principles present in the "Vedas", "Dharma-sutras", and societal conventions were collected and systematized according to the subjects they dealt with in the "Smritis". The "Smritis" dealt with topics such as the formation and ranking of courts, the appointment of judges, and the procedural regulations for enforcing substantive laws. The legal and judicial system they unveil is exceptionally advanced. The notable "Smriti" are the "Manu Smriti", "Yajnavalkya Smriti", "Narada Smriti", "Parashara Smriti", and "Katyayana Smriti". The distinguishing feature of the Manu "Smriti" is its classification into eighteen distinct branches of jurisprudence, including both civil and penal matters. Starting from the 2nd Century A.D., legal experts consistently prioritized the "Manu Smriti" as the most authoritative book. A recent study has determined that out of the 2685 verses (shlokas) in the "Manu Smriti", only 1214 verses can be deemed authentic, while the remaining 1471 verses are further insertions. The researcher has determined that the interpolated verses of the "Manu Smriti" either contradicts the concepts of Manu as expressed in other verses or are not germane to the subject matter in which they are included. The "puranas" served as a legal authority in ancient India. Each Purana is dedicated to extolling a specific deity, whom it considers to be the ultimate authority. The deities depicted in other "puranas" with equally lavish language are disregarded and, in certain instances, their worship is prohibited.

[1] Kumar, Dr. Surendra, Manu "Smriti" Published by Arsh Sahitya Prachar Trust, New Delhi, 6 -7

The Arthashastra, written by Kautilya, was highly significant and regarded as an authoritative legal text in ancient India, especially during the Mauryan period. Kautilya, alternatively referred to as Vishnugupta or Chankya, served as the Minister under the rule of Chandragupta Maurya (c. 322-298 B.C.).He has provided an elaborate elucidation of the judicial system. According to Kautilya, one of the key responsibilities of the government is to uphold and protect social order. He explains this concept in a comprehensive manner, encompassing both the preservation of social unity and the establishment of power to deter and penalize unlawful behavior. Kautilya has outlined the standards that regulate judicial procedures, encompassing the regulations governing the collection regarding evidence in both civil and criminal cases, the procedure of criminal investigation, and the severity and methodology of penalties for different sorts of offenses. The Arthashastra also explores the topics of penitentiaries, detention facilities, and the welfare of inmates. Kautilya has formulated a set of standards and principles specifically designed for judges and the king. Nevertheless, numerous sentences in the Arthashashra dealing to punishments have been identified as interpolations.[2]

III. CRIMINAL ADMINISTRATION IN ANCIENT INDIA

According to the "Smriti"s, the King's administration of justice was considered a highly significant duty. The "Smriti"s emphasized that the primary purpose of establishing the institution of kingship was to enforce "Dharma" (law) through the power of the King. Additionally, it aimed to punish individuals who violated "Dharma" and provide protection and assistance to those who were harmed. The "Smriti"s strongly stressed the King's duty to safeguard the people by ensuring fair and unbiased administration of justice. This obligation, they believed, was crucial for both the King's own well-being and the overall peace and prosperity of the people. The King's Court served as the supreme court of appeal and also had original jurisdiction.[3]

The inception of the initial state police institution can be traced back to the pre-Mauryan era. The comprehensive development of it is recorded in Kautilya's Arthashastra. The text asserts that the police force in ancient India was bifurcated into two distinct branches: the regular police and the covert police. The regular police force was organized into three tiers of officials: the Pradesta (rural) or the Nagaraka (urban) at the top tier, the rural and urban Sthanikas in the middle tier, and the rural and urban Gopas at the lowest tier. Pradesta's responsibilities were explained by Kautilya, including the method for conducting an inquiry

[2] R.P. KANGLE, THE KAUTILIYA ARTHASASTRA 15-20 (2nd ed., Motilal Banarsidass Publishers 1972).
[3] P.V. KANE, HISTORY OF DHARMASASTRA VOL. III 242-249 (Bhandarkar Oriental Research Institute 1973).

in the event of an unforeseen death. This involved a thorough examination of the deceased's body, as well as a detailed investigation by the police. Kautilya's work categorizes the secret police into two distinct groups: the peripatetic and the sedentary. The "Manu Smriti" offered instructions to the King on how to detect infractions by employing military people and covert operatives. The "Katyayana Smriti" delineates the responsibilities of an informant and an investigating officer. This suggests that there was a modern law enforcement agency that assisted the King in the implementation of justice during that period.[4]

The inception of the state penitentiary, akin to the state law enforcement agency, can be dated back to the pre-Mauryan era. It was mandated that a correctional facility be constructed in the capital city, featuring distinct accommodations for male and female prisoners, and ensuring robust security measures. Furthermore, it was required that the prisoners should be involved in meaningful work. The ancient Indian law also implemented a policy of embracing a compassionate outlook towards those who were found guilty of crimes and given prison sentences. The "Dharmamahamatras" were given the task of protecting prisoners from mistreatment and freeing those who deserved.

The Arthashastra provides an elaborate description of prison management. The dandaniti, or punishment policy, was a highly discussed topic in ancient India due to its close association with the governance of the State. Manu underscored the significance and practicality of punishment, asserting that it is the sole means by which all beings are governed, protected, and monitored even during their periods of rest. According to Manu, Yajnavalkya, and Brihaspati, ancient India had four types of punishment: admonition, censure, fine, and corporal punishment.

The corporal punishments, as a wider term encompassed capital punishment, amputation of the offending limb, branding the offender's head with a mark representing the committed offense, shaving the offender's head, and publicly parading them through the streets. The punishments were extremely severe, merciless, and violent. The Manu "Smriti" and other "Smritis" indicate that punishment was determined according to the Varna (caste) of both the offender and the victim. For example, according to the "Gautam Smriti," "Manu Smriti," and "Yajnavalkya Smriti," if a Kshatriya or a Vaisya were to insult or slander a Brahmana, they would be fined 100 panas and 150 panas respectively, while a Sudra would be subjected to physical punishment. This illustrates that the magnitude of punishment escalates as the

[4] KUMKUM ROY, THE EMERGENCE OF MONARCHY IN NORTH INDIA 214-217 (Oxford University Press 1994).

societal status of the offender declines. However, according to the "Katyayana Smriti", if a Kshatriya committed an offense, the punishment imposed on them would be twice as severe as the punishment placed on a Sudra for the same offense. The Manu "Smriti" also includes a comparable section stating that the punishment increases in severity based on the higher varna (social class) of the wrongdoer. This suggests that there were conflicting regulations regarding punishment in various "Smriti"s.

The examination of witnesses was mandated to proceed without any delay. Delay in examining witnesses could lead to a significant flaw, specifically a miscarriage of justice. Witnesses were legally obligated to provide testimony in court. Noncompliance with court appearance resulted in severe penalties. The failure to provide evidence is equivalent to providing false evidence. Perjury, which refers to the act of providing false testimony, was regarded as a grave offense and had a specified punishment. The King would confiscate the entirety of a person's riches if they were found guilty of citing false witnesses due to greed. Additionally, the person would be expelled from the kingdom. The party, whose witnesses testified against him, has the opportunity to present more and more credible witnesses to support his case and to demonstrate that the previously examined witnesses were guilty of perjury. Neglecting one's responsibilities towards society was regarded with great gravity. Any individual who neglects to provide aid, in accordance with their capabilities, in the prevention of crime shall be expelled together with their possessions and personal property. If a homeowner does not assist another person during a fire outbreak, they could be subject to a fine. Those who did not provide aid to someone in need, even if they were present at the scene or fled after being asked for help, were subject to a punishment that was twice as severe.

To summarize it all, the following points can be deduced from the above discussion:

1. Ancient Indian jurisprudence was influenced by the concept of '"Dharma"', which provided guidelines for proper behavior and prescribed many standards of conduct.
2. The codes or norms of conduct can be attributed to different manuals that elucidated the Vedic writings, such as '"puranas" and "Smritis".
3. The King possessed no autonomous authority, but rather obtained his powers from '"Dharma", which he was obligated to defend.
4. The contrast between a civil tort and a criminal offense was evident.

5. Although civil wrongs mostly revolve around disputes relating to wealth, the concept of pātaka or sin served as the benchmark for defining crime.
6. The Mauryas implemented a strict penal system that included severe punishments such as mutilation and the death penalty, even for minor offenses.
7. The "Dharma"sastra of Manu acknowledges violence, bodily injury, theft, and robbery as property offenses.
8. In the Gupta era, the judiciary comprised of the guild, the folk assembly or council, and the monarch.
9. Judicial rulings adhered to legal documents, societal customs, and the decree of the monarch, who was forbidden from disregarding the rulings.

IV. CRIMINAL JUSTICE SYSTEM IN MEDIEVAL PERIOD

The distinction between civil law and the criminal justice system was not very clear during the Delhi Sultanate. The Quran, the sacred scripture of Ijma, and the Hadis were the primary sources for the Sharia regulations about crimes and punishments, which the sultans employed to rigorously enforce. The sultan's justices preside over both original and appellate cases, making it the most esteemed criminal and civil court in existence. The second stage of the legal system that facilitates the dispensation of justice is the court of qazi-i-quzat, which serves as the highest judicial authority in the empire. Furthermore, situated beneath that hierarchical structure were village panchayats, which were granted the authority by the state to administer justice based on local customs, rituals, traditions, and the religious laws followed by the populace. Historically, capital punishment was employed as a means of penalizing individuals for their criminal actions.[5]

The rise of the Mughal Empire followed the downfall of the Sultanate of Delhi in India in 1526 C.E. The court system underwent significant reform. The Mughal kings were widely regarded as the epitome of justice. A distinct judicial body known as Mahakuma-e Adalat was established to oversee the enforcement of law and dispensation of justice inside the empire. Similar to the Delhi sultanate, the rules during that period were predominantly derived from the Quran. The authority resided in Allah, and the monarch was seen to be a devoted servant entrusted with the responsibility of executing Allah's commands on earth. The emperor was considering being selected as the representative of the all-powerful, with the ability to provide fair and just decisions to the people in his domain. During the Mughal

[5] M. BASHEER AHMED, THE ADMINISTRATION OF JUSTICE IN MEDIEVAL INDIA 76-82 (Aligarh Muslim University Press 1941).

rule, the judicial system was categorized into criminal and civil matters. However, this categorization was primarily determined by the agreement and awareness of the community, and the administration of justice was primarily based on religious texts without a standardized and codified set of rules. Nevertheless, there was a well-developed system of courts that varied based on the geographical area of the crime, ranging from the capital seat to provinces, districts, praganahs, and villages. [6]

The Criminal Judicial dealings in the medieval period in the Indian History could be summarized in the following way:

- The Emperor's Court was overseen by the emperor, who had authority over both civil and criminal proceedings.
- In its original jurisdiction, the court received backing from Mir Adil, Mufti, and Daroga-e-Adalat. Qazi-ul-Quzat and other chief justices aid the emperor in dispensing justice in matters of appeal jurisdiction.
- The Chief Justice's Court was the second prominent courtroom in the capital, presided over by the Chief Justice and staffed by necessary Qazies who served as puîne judges. This court held jurisdiction over civil, original, and criminal proceedings.
- The Chief Revenue Court is responsible for adjudicating cases related to revenue, which was overseen by the officials Daroga-e-Adalat, Mir Adil, Mufti, and Muhtasib.
- Furthermore, alongside these courts, the criminal law system throughout the Mughal Empire featured a distinct hierarchical judicial administration.
- The Faujdaar Adalat was overseen by a Faujdar who has the expertise to manage and prosecute riots.
- In addition, there was a Kotwal-e-Shahar who oversaw minor criminal matters.

The functioning of justice during the medieval era was marred by substantial deficiencies. An important problem was the absence of a clear distinction between the judiciary and executive branches. Additionally, the Islamic criminal law of that time was inconsistent and lacked uniformity. Furthermore, the laws established in the Fatwa-i-Alamgiri were often contradictory. The divergent viewpoints of Muslim jurists provided the Qazi with the discretion to interpret and implement the laws according to their own understanding. During that period, corruption was widespread, allowing the accused to easily evade punishment by

[6] J.N. SARKAR, MUGHAL ADMINISTRATION 108-115 (M.C. Sarkar & Sons 1952).

paying bribes. Moreover, the law of evidence was highly poor, characterized by uncertainty and defects, as it prohibited the execution of a Muslim only based on evidence provided by a non-Muslim. If there existed evidence, one Muslim's testimony was considered equal to that of two Hindus.

V. CRIMINAL JUSTICE PERIOD IN MODERN ERA

The legal system of Colonial India originated with the creation of the East India Company. At first, the administration of justice was quite primitive and elementary. The East India Company exercised sovereign authority over the mainland to handle both civil and criminal issues. The Privy Council served as the supreme authority for appeal in serious situations. However, the objectives and aims of the criminal justice system, as well as the methods used in its implementation, undergo periodic changes. The legal system throughout the colonial era was also characterized in a similar manner. The emergence of modern criminal law in India can be attributed to the influence of British colonial administration. During this period, criminal laws underwent multiple amendments and several applications of criminal law were discontinued. This era began with the East India Company assuming control over the states they had acquired. It can be accurately described as a period lasting approximately 250 years. The development of criminal law in India can be categorized into two distinct periods: the pre-independence era and the post-independence era.

- Pre- Independence Era:

In 1833, the British government established the 'Indian Law Commission' to investigate the authority, abilities, and regulations of the current courts in India. The commission was tasked with producing reports that detailed the findings of their investigations and proposed necessary changes. The Law Commission dedicated its efforts to the development of the Anglo-Indian Codes between 1834 and 1879. One of the notable achievements of the initial Law Commission was the creation of the Indian Penal Code. This code, proposed by Macaulay in 1837, was officially enacted in 1860. The Code of Criminal Procedure was another significant law that was codified. Upon its initial enactment in 1861, the Code of Criminal Procedure vigorously protected the "privileges" or "rights," as they were alternatively referred to, so establishing the law as both a symbolic and tangible manifestation of imperial authority.[7] Subsequently, the Evidence Act of 1872 was implemented, serving as a notable illustration of the application of scientific methods in Criminal Law and other legal

[7] Dr. Reshma Umair, Development of Criminal Law in India, ICSSR (2017)

domains. Although the British authorities enacted regulations, the impact of these rules on Indian society was a significant cause for concern.

- Post- Independence Era

Following independence, the Parliament reviewed and approved all previous laws, making amendments, alterations, or repeals as necessary. This was done since the Constitution of India become the ultimate authority for all existing laws in the country. Any law that contradicts the provisions of the Constitution of India would be invalidated. Consequently, each provision of every statute was thoroughly examined and verified. The Indian Penal Code of 1860 and the Indian Evidence Act of 1872 are actively involved in the practice of Criminal Law in India. Furthermore, numerous other laws are implemented alongside the Indian Penal Code (IPC) and the Evidence Act, and over time, several revisions have been made to these acts. Several sections have also been modified. Provide the precise definitions of 'Electronic record' and 'Harbour', as well as the sections pertaining to Criminal conspiracy, sedition, causing death by negligence, molestation, acid attack dowry death, acid attack, sexual harassment, voyeurism, stalking, certain sections relating to sexual offense, and cruelty by husband or relation of husband. Criminal Law in India is always evolving due to the occurrence of new offenses and the establishment of new boundaries.

Conclusion

In conclusion, the Indian knowledge system holds significant potential to inform and shape the development of criminal laws in the country. By integrating traditional wisdom, values, and cultural perspectives into the legal framework, policymakers can create more effective and equitable laws that resonate with the diverse population of India. Moreover, leveraging indigenous knowledge can foster a deeper understanding of the root causes of crime and provide innovative solutions for prevention and rehabilitation. As India continues to evolve in its legal landscape, it is imperative to recognize and harness the rich heritage of its knowledge systems to ensure justice and prosperity for all.