

Crime and Punishment as Revealed in the Text *Daṇḍaviveka*

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Abstract

Human being either knowing or unknowing has been committing crime. It is also necessary that a crime free society is essential for all round development of human being. Service to humanity is the aim of human life. As the time passed, people started to destroy the weaker. Such a situation can be compared to *Mātsyanyāya* i.e big fishes swallow the small fishes in the water. In the *Manusamhitā* the fact is uttered that if the king did not without tiring inflict punishment on criminals the stronger would roast the weaker like big fish swallow the small fish. The term 'Crime' is interpreted in Sanskrit as '*aparādha*'.

The present text *Daṇḍaviveka* is a medieval nibandha of Vardhamana Upadhaya, based on primitive ideas is divided into seven chapters:

Introductory [Daṇḍaparikara], Murder, Theft, Rape, Defamation, Assault and Miscellaneous [Prakīṛṇaka]. Gautama points out that the word *Daṇḍa* is derived from the root *Dam* i.e. to restrain and to reform. *Viveka* means self-conscience.

The *Daṇḍaviveka* quoted a text of Bṛhaspati, four types of punishment that is admonition, reproof, fine and corporeal. The nature of punishment appeared to have the objective of preventing crimes.

Keywords: *Daṇḍaviveka*, crime, *Mātsyanyāya*

India's culture is one of the oldest in the world. In ancient India *daṇḍa* was considered to be a pivotal constituent of legal and social system. It is signified punishment means for violating various laws of society. These laws were framed and established by the ruling classes and many points followed the principle of *Varṇa* or class legislation. It is believed there was a time in the past when people lived in peace and harmony. "There was originally a state of perfection in which there was no king, no kingdom, no punishment, no berater." "Just there was neither state nor rule, neither punishment nor anybody to exercise it, the people used to protect one another through righteousness and sense of justice."¹ But as the time passed, people lost this idyllic life. The strong people started to destroy the weak ones. This situation can be compared to *Mātsyanyāya* i.e. big fishes swallow

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Mahābhārata 12.59.24

the small fishes in the water. In the *Manusamhitā* the fact is uttered that if the king did not without tiring inflict punishment on criminals the stronger would roast the weaker like fish on a spit.²In a society people started to feel insecurity in their lives. Then they felt the need of ruler or supreme authority to punish offenders because people started to commit crimes.

- Background and Review of Crime-

The term "crime" is interpreted as "aparādha", which according to *Śabdakalpadrūma* means *akārya*. Crime is an act that breaks law, a serious offence, illegal acts. In the *Amarakośa* the synonymous word of crime is *āgas, mantu*.³ It is also defined as the violation of rules and regulation which are enforced by the state and the society. In Sanskrit Punishment means *Danḍa*. *Danḍa* means a heavy stick. In the *Amarakośa* *Danḍa* means one of the four upāyas used by the kings for the purpose of administration.⁴ It is depicted as strength. The other three was *bheda, sāma, dāna*. *Ānvīkṣikī*, the three Vedas, and *Vārtā* those three branches of learning are controlled by the rod i.e *danḍa* by means of *Yogaḥṣemasādhana*. *Yoga* is *alabdhalābhārtha* i.e to earn what has not been earned. *Kṣema* is *Labdhaparirakṣaṇam* i.e to protect what is earned. The king should have acquisition of things, preservation of things, and expand the possessed things to distribute among the profits. The orderly maintenance of worldly life depends upon rod. ⁵*Danḍa* is the law of punishment or the science of government i.e *danḍanīti*. It is the science of government that the course of the progress of the

²" यदि न प्रणयेद् राजा दण्डं दण्ड्येष्वतन्द्रितः।

शूले मत्स्यानिवापक्ष्यन् दुर्वलान् वलवत्तराः॥" *Manusamhitā* 7.20

³ *Amarakośa* 2 p233

⁴" स प्रतापः प्रभावश्च यत्तेजः कोषदण्डजम्।

भेदो दण्डः साम दानमित्युपायचतुष्टयम्।

साहसन्तु दमो दण्डः॥" *Amarakośa* 2.p232

⁵ "आन्वीक्षिकीत्रयीवार्तानां योगक्षेमसाधनो दण्डः, तस्य नीतिर्दण्डनीतिः- अलब्धलाभार्था, लब्धपरिरक्षणी, रक्षितविवर्धनी, वृद्धस्य तीर्थेषु प्रतिपादनी च। तस्यामायत्ता लोकयात्रा। तस्माद्लोकयात्रार्थी नित्यमुद्यतदण्डः स्यात्।" *Arthasāstra* 1.4.1

world depends on Daṇḍanīti. It is by means of the king can hold under his control both his and enemy. Manu has stated that for the king's sake the Lord created his son "Punishment", the preceptor of all creatures, in incarnation of the law, formed of Brahman's glory.⁶ Punishment alone governs all created beings, Punishment alone protects them, Punishment watches over them while they sleep, the rational people declares punishment is to be the identical with law.⁷

The *Ṛgveda* mentions thieves i.e *Tāyu* or *Stāyas*⁸ and robbers i.e *Taskaras*.⁹ People considered the criminals like major evil of the society. They wanted to get rid of them. Kātyāyana defined theft as an act which deprived a man of his property sneakily. Nārada defined theft as an act done by fraud either openly or in a concealed manner.¹⁰ It is significant Kāmandaka death as a punishment was to be avoided even for the gravest offence.¹¹

- Crime depicted in the text Daṇḍaviveka-

The present text *Daṇḍaviveka* is a medieval nibandha of Vardhamana Upadhaya, based on primitive ideas is divided into seven chapters, Introductory [Daṇḍaparikara], Murder, Theft, Rape, Defamation, Assault and Miscellaneous [Prakīrṇaka]. Gautama points out that the word *Daṇḍa* is derived from the root *Dam* i.e to restrain and to reform. *Viveka* means self-conscience.

⁶ "तस्यार्थे सर्वभूतानां गोप्तारं धर्ममात्मजम्।

ब्रह्मतेजोमयं दण्डमसृजत् पूर्वमीश्वरः॥" *Manusamhitā* 7.14

⁷ "दण्डः शास्ति प्रजाः सर्वा दण्ड एवाभिरक्षति।

दण्डः सुप्तेषु जागर्ति दण्डं धर्मं विदुर्बुधाः॥" *Manusamhitā* 7.18

⁸ *Rgveda* 1.65.1,4.38.5

⁹ R.V 10.4.6

¹⁰ *Nāradasamhitā* 14.12

¹¹ "प्रमाणाभ्यधिकस्यापि महत् सत्त्वमधिष्ठितः।

करोत्येव पदं मूर्ध्नि केसरी मत्तहस्तिनः॥" नीतिसार १४.१६

The first chapter on the theory and practice of punishment is divided into following sections:

- Vices following the non-punishment of the punishable.
- Merits of proper punishment
- Requisites of the administration of criminal justice
- Responsibilities of assessors
- Enumeration of punishments
- Gradation of fines
- Specific offences and their punishments
- General exceptions to criminal liability.

The *Daṇḍaviveka* of Vardhamāna Upādhyāya of Mithilā, was the son of the poet Bhaveśa and belonged to the Bilvapañcaka family of Mithila, who flourished in the latter half of the 15th Century in the court of the king Bhairava as his judge, was published on the collation of several Mss. in 1931 by the late Mm Kamalakrishṇa Smṛtitīrtha of Bhatpara, West Bengal. He placed his own views considering the opinions of other smṛtikāra for the purpose of protecting the subjects. Dharma means dispenser of justice, the equation of justice with dispenser of justice having been made for glorification.¹² *Daṇḍa* is formed by five elements but partaking of the splendor of the divine golden the progenitor of Brahman, the creator. *Īśarah* means the creator of all beings and *Rājā* i.e king is derived from *prakṛti-rañjana*.¹³ *Netā* i.e the leader means he who makes the subjects achieve their respective ends of life. *Jāgarti* denotes performs the work of a person, remaining awake, which is nothing but dispelling the fear from thieves etc.¹⁴ The line *śūle*

¹² "राज्ञो यः प्रजारक्षणेभ्यः धर्मास्तदर्थमिति। धर्मं धर्मव्यवस्थापकम्।" DB p 3

¹³ "ईश्वरः प्रजासृष्टा राजा प्रकृतिरञ्जनात्." DB p3

¹⁴ "नेता स्वधर्मप्रापयिता। जागर्ति जाग्रतः कार्यं चौरादिवारणं करोति।" DB p3

matsyān ivāpakṣyan adopted by different reading by Medhātithi and Kullūka Bhaṭṭa .According to Kullūka śūle *matsyān ivāhiṃsyur* ,both the above readings meaning the stronger ones would always inflict injuries on the weaker ones. In the matters of ownership also no enjoyment of one's separate property. One's own wishes would be possible owing to it's invasion by more powerful persons. The word *adharottaram* means reversal of the positions of the high and the low. The thieves having criminal intimacy with other men's wives, who are also causes of disturbance. By the way of revenue Bali means one-sixth portion of the agricultural produce such as rice and *kara* is what is received by the king every month from the villagers and townsmen. *Śulka* or taxes means one-twelfth portion of the profit from traders and other businessmen. *Pratibhoga* consists of the daily presents to the king of fruits,flowers,vegetables etc.It is said that the torment of the Gods is caused by the depredations of the wicked persons. The king incurs great infamy and goes to hell after death by punishing the innocent persons. Vice equally accrues to the king in putting to death a person, not to be put to death .Kātyāyana said that kings and ministers specially incur sins from the non-restraint of the vicious and infliction of punishment on the innocent person. The word *enam* means sin or vice .According to context it is also read *enaḥ* .The word *natānām* means of the humble i.e of the unpunishables.¹⁵

- Punishment as revealed in Daṇḍaviveka-

After withholding punishment ,the king should fast for a day and a night taken together and the priest for three consecutive days and nights.The priest should undergo the *kṛcchra* penance. The word *adaṇḍane* has a variant as *adaṇḍya-daṇḍane*,which is also of the real import of the former reading,as the

¹⁵" राजानो मन्त्रिणश्चैव विशेषादेनमाप्नुयुः।

अशासनात् पापानां नतानां दण्डधारणात्।।''DB p 6

+ 'एनमिति छान्दसप्रयोगस्तेन पापमित्यर्थः।नतानां विनीतानां अदण्डानामिति यावत्।''DB p6

word *daṇḍotsarge* means by withholding punishment, as laid down in works on law. The priest has to undergo three days and nights and perform the *kṛecchra* penance. The king should undergo three consecutive days and nights fast in case of punishing an innocent person.¹⁶ In course of reserving arms Baudhāyana forbid not to keep up arms to self. But Manu thinks that all members of Brāhmaṇa class may take up arms in case of obstruction offered to the performance of religious duties, revolution, raised in course of foreign invasion, for saving the lives of women and Brāhmaṇas. Bardhamāna ascertained his opinion that there is no any sin to kill deceitful persons and also amputate their limbs. He also said that there is nothing any offence to kill deceitful Brāhmaṇa. Any killing of any creature without exception is prohibited. It is a pure, truthful and talented king having good assistance and making enquiries of the criminal cases. The presiding judge is a spokesman, the king is the punisher and the courtiers supervise the litigation. Gold and fire are employed for administering oaths and water is used for thirsty and bewildered persons, while the accountant counts the money and the scribes writes out the judgment. The king's own men bring the defendant, the courtiers and the witness and keep under their vigilance both the plaintiff and the defendant until the suit is ready for hearing.¹⁷

The *Daṇḍaviveka* quoted a text of Bṛhaspati, four types of punishment that is admonition, reproof, fine and corporeal. The author has followed interesting note that Vāgdaṇḍa means rebuking a person with the words. *Dhig daṇḍa* means reproaching a person with the words. *Dhanadaṇḍa* is of

¹⁶ "तेनानुपदेशे चिरात्रोपवासो विपरीतोपदेशे कृच्छ्रं पुरोहितस्य। अदण्डने रकरात्रमुपवासो राज्ञः।" *Daṇḍaviveka*

¹⁷ "प्रत्यर्थि - सभ्यानयनं साक्षिणाञ्च स्वपुरुषः।

कुर्यादलग्नकं रक्षेदर्थिं प्रत्यर्थिनौ तथा॥" DB p18

two kinds that is fixed and fluctuating. Fixed fine is three kinds is low, medium, or high. Corporeal punishment is of three kinds viz infliction of pain, mutilation of limbs and death proper. Pain can be inflicted in four ways viz by beating, restraint, chaining and harassing. *Prathama-sāhasa* is fine ranging between twenty-four and ninety-one panas. *Madhyama-sāhasa* is that ranging between two-hundred panas. *Uttama-sāhasa* is that ranging between six hundred and thousand panas. Pana is a copper coin of certain weight. A unit of silver is one-seventeenth part of a unit of gold. A *dināra* is a silver coin, made up of twenty-eight units of silver, while a *nishka* is a gold coin, made up of four units of gold. A *karsa* is a certain weight equal to 16 masas.

- Social background of punishment-

Vardhamana has quoted a text of Nārada that six big categories of offences are the subjects of punishment. Homicide, theft, violating the chastity of a woman other than one's wife, two kinds of severities, miscellaneous heading. These are six types of punishment. All kinds of civil disputes originate from greed or ignorance and so either the plaintiff or the defendant must be guilty of false assertion of right facts and it is true that punishment is inflicted on the guilty and hence it is true that punishment is inflicted on the guilty party, in civil cases also. It is said in *Daṇḍaviveka* that punishment is not offences, following incidentally from civil disputes, but the suppression of crimes proper. Crimes are those which are reported to the king by spies and in which offenders are brought before tribunals by the officers of the king and are tried not from any private complaint.

The second chapter on murder delineates the offence of manslaughter and animal-slaughter. It also divided into for class and castes and pecuniary conditions of the offenders themselves. According to Yāgñavalkya The sons and wives of

men murdered by an unknown person ,should be separately interrogated. *Daṇḍaviveka* adds the authority has putting questions by mean of conciliation one by one to them.Killing an woman specially ātreṃyī i.e. menstruating woman or kill a cow or a bull and also murder of śūdra had to undergo cāndrāyaṇa penance¹⁸.Killing of some animals is similar with the murder of śūdra person like swan,bhāsa, barhiṇa,cakravāka ,valākā,crow,owl,frog,mongoose,serpent,wag-tail etc.Killing a kṣatriya man and Brāhmaṇa man had to forfeited entire property,¹⁹who shall then put them to death.In this book it described the fact the actual murderer,the adviser,the supporter,the encourager,the assistant,the winkerwho offer shelter the murderer are offenders, i.e sahāya means very intimate with the culprit.²⁰

The chapter on Theft discuss various types of thefts.

1. On grocers and dealers for cheating customers by false weights.
2. On manufactures of some products
3. On quacks
4. On gamblers
5. On bogus astrologers.
6. On persons who extort money by false impersonation.
7. On buglers and pickpockets
8. Counterfeiter and professional criminals.

Vardhamāna has defined Theft as unlawful taking of other man's substances.Robbery consists in depriving other men of theirb property.Vardhamāna has classified stealers of property under three heads:-

¹⁸ "क्षुद्रबधेन स्त्रीबधो गोबधश्च व्याख्यातो.....चान्द्रायणं चरेत्॥" DB p71

¹⁹ "क्षत्रियादीनां ब्राह्मणवधे बधः सर्वस्वहरणञ्च॥" Daṇḍaviveka

²⁰ "सहायो ब्यबस्थितः- अन्यश्च वध्यत्वात्तद्विनाशको प्रवर्त्तको॥" DB p78

- Robbers
- Cheats
- Thieves

The punishment of the three classes of stealers inflicted of proper penalty, pecuniary or corporeal proclaimed of the guilt of wrong-doer. DV manifested that the kidnapper or stealer owing to poverty and the importance of the value of stolen property. Kidnapper of a married woman should be made to lie upon an iron bed and put to death, by burning him alive with the fire kindled with dry grass. In case of kidnapping royal family members one thousand and eight panas is to be fined or corporeal punishment.

The chapter on Rape is very comprehensive and includes rape, adultery, incestuous intercourse, unnatural offences etc. The subject is first divided into intercourse with married women and that with unmarried women. Married women are chaste and unchaste. Unmarried women are considered as virgin, outcaste and prostitute. Brahmin found guilty of rape are to be banished from the territory. Members of other castes are to be killed if they commit rape upon woman of any higher caste.

This chapter regards about the punishment for abuse or defamation i.e Vākpāruṣya. Nārada said words embodying insults, imputations, irritating utterances against country, caste, family etc constitute Vākpuruṣa. DV converse that the residents of Gaur are quarrelsome. When a person out of anger utters abusive words by exposing about private parts of the body or castes against occupation, country or family are called *asila* i.e obscene attitude. In ancient times Liber is not found for slander person. Truth and apology could deliver the criminals.

This chapter deals with assault and offence which proceed from taking law in one's own hand. The following classes of persons are declared as assailants:-

1. House-burner
2. Poison-administerer
3. Armed person
4. Stealer of Wealth
5. Dispossessor of corn-field.
6. Kidnapper of wife.

The above six classes of persons are engaged of the offences. He who throws ashes on another's person beats him with hands is to be fined sixteen masas. In cases where they have already committed the offences or threaten to do such future, there is no warrant for taking the law in one's own hands and putting the person to death. The infliction of bodily pain, infliction of mental pain is also an offence and is punishable.²¹

Sāhasa is of five kinds includes homicide, theft, molesting other's wives, rudeness of speech and assault. It is called *Sāhasa* they are done with pride of power. Suicide and misappropriation of the property of helpless persons are also *Sāhasa* acts. If some person survive from suicide should be punished with two hundred copper coins. Person who snatched the property of childless widows should be treated as thief and punished them.

The causes for the institution of civil suits and criminal proceedings are called *Vivādapada*. They are -

- non-payment of debts.
- deposit and pledge
- sale without ownership

²¹ Reference- Daṇḍaviveka of Vardhamana Upādhyāya edited by Kamalakrishna Smriritirtha chapter Introduction

- concerns among partners
- non-payment of wages
- disputes between owner and servant
- robbery and violence

In the state offences the king is informed by his spies of the deviation from the right path of all classes of men in all stages of life. There were six state offences:-

- Transgression of the orders of the king
- Causing disruption among the perfects of the city
- Upsetting the code of conduct of the dissenting community
- Quarrel between father and son
- Non-performance of expiatory rites
- Not bestowing gifts to deserving persons
- Intermixture of higher and lower castes and so forth.

No tax will be delivered from the following persons-a king, a srotriya, an orphan, a wanderer, a child, an old man, a woman in lying-in-room, a maiden, and a widow.

- Methodology of Research-

I use diachronic type of method to seek the point of views regarding crime and punishment as revealed in the Daṇḍaviveka. I study the ancient text Daṇḍaviveka of Vardhamāna Upādhyāya. This method can heighten the understanding of the values, significance of the texts. My intention is enriching the views related crimes of ancient India as well as in the

meantime penalties were proposed. The king provided protection to the public applying penalties.

Vardhamāna Upādhyāya has written nine works on Smṛti - Daṇḍaviveka, Datidaviveka, Daitaviveka, Paribhāṣaviveka, Smṛtitattvaviveka, Smṛtiparibhāṣā etc. Daṇḍaviveka and Dvaitaviveka relate to Law i.e vyavahāra, while the rest to ritual and ceremonial law. Daṇḍaviveka quoted from the metrical Smṛtis of Manu, Yājñavalkya, Vaśiṣṭha, Gautama, Nārada, Kātyāyana, Vyāsa, and others, from four commentaries of Manu-smṛti like Kulluka Bhaṭṭa, Govindarāja, Medhātithi, and Nārāyaṇa Sarvajna., and also from the Mitākṣarā commentary of Yājñavalkya Smṛti, Purāṇas and various nibandhas like Kalpataru, Kāmadhenu, Vivādaratnākara, Vivādacintāmani, the works of Bhabvadeba Bhaṭṭa, Halāyudha, and Lakṣmīdhara etc

- Conclusion-

It may be stated in conclusion that the following modern threefold theories of punishment have been mostly followed in the medieval treatise on Hindu Criminal Law , viz. 1. Preventive or deterrent 2. retributive and 3. reformative. The first one preventive or deterrent theory is manifest in death occurrence while banishment and mutilation of the offending organ of the culprit, fine, forfeiture of property are instances of the retributive kind. Detention of the culprit in a jail or in a solitary cell for repentance of wrong doer. Some provisions of punishment in some cases reveals sincere concern of smṛtikāra about human behavior. The main objective of the criminal justice system is to create social harmony and maintain order by enforcing the laws and curbing their violation.

Abbreviations

DB - Daṇḍaviveka

RV- Rgveda

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