

The Criminal Law of Ancient Time With a Special Reference to Kālidāsa's Works

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Abstract

Criminal law is a system of laws concerned with punishment of individuals who commit crimes. Punishment is the way to decrease the crime and makes the society crime free. Therefore, criminal laws are important for the improvement of society. From the very ancient time this law prevails in India as well as in the other country. As *Manusmṛti*, *Arthaśāstra* and many other ancient works has discussed about it. Even, in the works of Kālidāsa there are some instances which can be link to this particular law. So, its importance lies in the society from very ancient period. The aim of this paper is to highlight those laws with a special reference to Kālidāsa's works.

Keywords: Criminal law, *Manusmṛti*, *Arthaśāstra*, *Raghuvamśam*, Kālidāsa

In the legal dictionary the meaning of the criminal law is found in this way that it is the area of law that deals with crimes against others and how they are prosecuted¹. Therefore, an act committed in violation of a law forbidding it for which an adult can be punished, upon conviction, by incarceration or other penalties or a corporation penalized². A prosecutorial action taken by the government towards such person who has knowingly and wilfully not complied with the law³. Consequently, such people are imposed with fines or imprisonment. So, these kinds of laws are rooted in the ancient period which is prevailing in modern days. Kautilya in his *Arthaśāstra* has initiated a detailed discussion on criminal law which is titled as *kaṇṭakaśodhanam*. It is the name of 4th book of *Arthaśāstra* where various chapters relating to criminal law are included. Some of those topics are - arrest of criminals on suspicion, examination of sudden death, trial and torture to obtain confession, protection of all government departments, fine in lieu of mutilation of limbs, death with or without torture and punishment for violation of justice⁴.

In ancient India, punishments were given according to the severity of the crime. In this context Kālidāsa says in the *Raghuvamśam* that the kings of the Raghu dynasty inflicted punishment in proportion to the crime⁵. Punishment is the way to decrease such criminal or other offences. Manu has mentioned in the 8th chapter of *Manusmṛti* that capital punishments should be given for the offence of theft⁶. In the 6th Act of the *Abhijñānaśakuntalām*, it is found that theft is punishable with death. This scene happens when a fisherman is accused of the crime of stealing a ring of the king. He is caught by two policemen. But when they come to know that he had not actually stolen the ring, then one police man Jānuka told that he comes back from the abode of death⁷. It means that at that time theft was not a minor crime. The person who committed this crime was given death penalty.

In the *Vikramorvaśīyam*, it is seen that even a bird could not save themselves from punishment. In the 5th act, a bird steals a gem with gold chain. At that time the king tells that the bird invites his own death from the king⁸ and therefore he dares to steal that.

¹ *Dictionary of Terms and Legal Definitions Related to Hazardous*, p. 27.

² *Ibid.*

³ *Ibid.*

⁴ *Arthaśāstra*, Content

⁵ yathāvidhihutāgnīnām yathākāmārcchitārthinām/
yathāparādhadāṇḍānām yathākālāprabodhinām// *Raghuvamśam*, I.5

⁶ tathā dharimameyānām śatādibhyadhike vadhaḥ/
suvarṇarajatādīnāmuttamānām ca vāsasām// *Manusmṛti*, VIII.321

puruṣāṇām kulīnānām nārīṇām ca viśeṣataḥ/
mukhyānām caiva ratnānām haraṇe vardhamarhati// *Ibid.*, 323

⁷ eṣa yamasadanam praviśya pratiniṣṭtaḥ
The Abhijñānaśakuntalam of Kālidāsa, VI.p.202

⁸ ātmano vadhamāharttā kvāsau vihagataskaraḥ/

Vidūṣaka also suggests that the bird should not get mercy just for being a bird. Here it is seen that punishment was equal for everyone which did not even spare a bird also for any kind of crime.

Robbery is another offence under criminal law. Kauṭilya explains it as the direct seizure of one's property⁹. It also stands for fraudulent and indirect misappropriation¹⁰. Even Kauṭilya states that in the case of robbery the fine shall be proportionate with the crime¹¹. There is a glimpse of robbery in the *Mālavikāgnimitram*. Paribrājikā narrated the incident she faced when she was heading to Vidiśā with her brother Sumati and Mālavikā with the intention of offering Mālavikā to the king for marriage. At that time, a large group of traders were also going to Vidiśā from Vidarbha. So, they associated themselves with that large group. At the end of day's journey, they encamped in a forest to rest. Then, they were attacked by a group of highway robbers¹². Though the caravan warriors had a short fight with the robbers, but were repulsed by the latter¹³. Then Paribrājikā's brother endeavoured to rescue Mālavikā, who was terrified at the onslaught of the enemy. After that, her brother owed his master's debt by giving his own life¹⁴. Then Mālavikā came from the power of the foresters into that of Vīrasena, and was sent by Vīrasena to the Queen¹⁵. This incident is completely of a criminal case where some robbers attacked them in their way. But finally she was recovered by the Vīrasena who was commander in chief of Vidiśā. At that time too, people were not free from the danger and so the merchants travelled in caravans escorted by soldiers. Moreover a minister gave up his life for the sake of saving others. He gave up his life to pay master's debt.

In the *Raghuvamśam* a scene of the king Daśaratha is found where he is seen to be indulged in crime. During the hunting the king Daśaratha hears a deep agreeable sound produced by the filling of a jar. Then he discharges an arrow suspecting it to be the roar of an elephant¹⁶. After that he hears a cry and finds that that was the cry of the son of a *Muni* who was pierced by his arrow¹⁷. The king was urged by the son of the *Muni* to take him to his parents who had lost their sight, Daśaratha did this and he himself narrated to them his rash act which he committed through ignorance¹⁸. Then that blind couple lamented bitterly as their son became lifeless and the old man cursed the king Daśaratha with the tear from his eyes gathered in his hands¹⁹. The curse was that the king would also like him meet a death in his old age through grief for his son²⁰. In this aforesaid illustration, it is seen that the king Daśaratha killed a son of a *Muni* out of his ignorance. As here an innocent person lost his life, so it was a crime done by the king. As the time was different, the king is not seen getting punishment in accordance with the law, instead of that he got a curse which yielded in the later part of his life.

But Kālidāsa's *Raghuvamśam* gives a hint that at the time of the reign of the dynasty of Raghu theft was limited to the word only. The poet states that for theft, ungrasping other people's wealth resided in the word expressive of itself²¹. Apart from theft,

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- yena tatprathamam cauryam goptureva grhe ktam// *Vikramorvaśīyam*, V.1
- ⁹ sāhasamanvayavatprasabhakarma *Arthaśāstra*, III.17
- ¹⁰ niranvaye steyamapavyayane ca/ *Ibid.*
- ¹¹ yathāparādha itī kauṭalyaḥ/ *Ibid.*
- ¹² tūṇīrapaṭṭaparīṇaddhabhujāntarālamāpārṣṇīlambiśikhībarhakaḷāpadhāri/
kodaṇḍapāṇi ninadat pratirodhakānāmāpātaduṣprasahamāvīrabhūdanīkam//*Mālavikāgnimitram*, V.10
- ¹³ tato muhūrtaṁ baddhayuddhāste parāṇmukhībhūtāḥ sārthavāhayoddhārastakaraiḥ/
Ibid., V. p.102
- ¹⁴ imāṁ parīpsurdurjāte parābhībhavakātaram/
bhartṛpriyaḥ priyairbharturānṛṇyamasubhīrgata// *Ibid.*, V.11
- ¹⁵ seyamātavikebhyo vīrasenam vīrasenād devīm gatā/ *Ibid.*, V.p.103
- ¹⁶ kumbhapūraṇabhavaḥ paṭuruccairuccāra ninado'mbhasi tasyāḥ/
tena sa dvīradbr̥mhitasaṅkī śabdapātinamiṣum visasarja// *Raghuvamśam*, IX.73
- ¹⁷ hā tāteti kranditamākarnya viṣaṇṇstasyānviṣyan vetanasagūḍham prabhavam saḥ/
śalyaprotam prekṣya sakumbham muniputram tāpādantaḥ śalya ivāsīt kṣitijo'pi// *Ibid.*,75
- ¹⁸ taccoditaśca tamanuddhṛtaśalyamrva pitroḥ sakāśamavasannadr̥sornināya/
tābhyām tathāgatamupetya tamekaputramajñātāḥ svacaritam nṛpatīḥ śaśaṁsa// *Ibid.*,77
- ¹⁹ tau dampatī bahu vilapya śīśoḥ prahartrā śalyam nikhātamudahāratāmurastaḥ/
so'bhūt parāsuratha bhūmipatīm śaśāpa hastārpitair nayanavāribhireva vṛddhaḥ// *Ibid.*,78
- ²⁰ diṣṭāntamāpsyati bhavānapi putrasokādantye vayasyahamiveti tamuktavantam/
ākṛāntapūrvamiva muktaviṣam bhujāṅgam provāca kosalapatīḥ prathamāparādhaḥ// *Ibid.*,79
- ²¹ na kilānuyayustasya rājāno rakṣituryaśaḥ/

there is another indication which portrays a picture of crime free territory. It is explained by the poet that when the king Dilīpa was reigning over the earth, even the breeze did not disturb the garments of drunken women fallen asleep on the way to the pleasure-ground²². So, no one could dare to stretch forth his hand to take them away. It shows the power of the king for which no criminal activity occurred.

In the 4th act of the *Mālavikāgnimitram* it is said by the king Agnimitra that on festival days attendants ought not to be imprisoned, even they committed faults²³. Therefore, Mālavikā and her friend got their freedom because of the day being a festive occasion. Another instance is found in the *Raghuvamśam*²⁴ where the king Dilīpa found no prisoners whom he could liberate on the auspicious occasion of the birth of his son. It indicates that during such delightful occasions like festival and birth of prince the prisoners got liberty. In ancient period, it was one of the ways of expressing their joy by liberating prisoners.

In this way, ancient law maker has discussed about criminal law. Kālidāsa has also mentioned this kind of instances in his works. From the above discussion, it is seen that in ancient time criminal are less, but still people realise the existence of this laws. Criminal laws were equal for everyone. Even a bird should not get mercy just for being a bird. It shows its equality. Thus ancient Indian society was run in a very smooth manner.

vyāvṛttā yat parasvebhyaḥ śrutau taskaratā sthitā// *Ibid.*,I.27

²² yasmin mahīm śāsati vāṇinīnām nidrām vihārārdhapathe gatānām/
vāto'pi nāstraṁsayadamśukāni ko lambayedāharaṇāya hastam// *Ibid.*,VI.75

²³ nārhati kṛtāparādho'pyutsavadivaseṣu pariḥano bandham/
īti mocite mayaite praṇipatitum māmupagate ca// *Mālavikāgnimitram*,IV.17

²⁴ na samyatatasya babhūva rakṣiturvimocayed yaṁ sutajanmaharṣitaḥ/
ṛṇābhidhānāt svameva kevalam tadā piṭṛṇām mumuce sa bandhanāt//

Raghuvamśam, III.20