STUDIES IN ANCIENT INDIAN LAW & JUSTICE

R. K. CHOUDHARY

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IN
ANCIENT INDIAN LAW AND JUSTICE

With a Foreword by

PROF. P. K. GODE

OF

Bhandarkar Research Institute (Poona)

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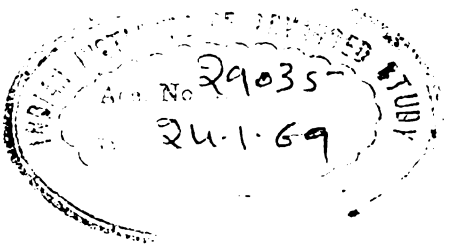

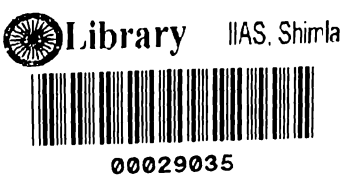

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To

MY TEACHER

Sri Giridhar Chakravarti, M.A., B.L.

PRINCIPAL, G. D. COLLEGE

BEGUSARAI

In token of grateful regard and esteem

PREFACE

In the present work I have brought together the results of my researches, extending over a period of about five years, on our ancient Law and Justice, on which I originally planned to submit a thesis which had ultimately to be dropped due to certain unavoidable reasons. Some of the topics included in this work have come out in different journals of the learned societies of India. While writing on these topics I was fully conscious of my limitations and also of our ancient historical literature which is yet to be written. I am very much grateful to all the pioneers in the field. The treatment and intepretation of the subjects are mine. A critical analysis of our ancient legal system is beyond the scope of this little volume and my humble attempt is not directed towards the realisation of that end. I have simply tried to collate all the possible materials and I do not claim to call it a comprehensive survey of our ancient Law and Justice.

I wish to acknowledge with sincere thanks my indebtedness to the following scholars who have helped me with their valuable suggestions in the preparation of my work : (i) Mahamahopādhyaya P. V. Kane M. A. B. L., ex-Vice Chancellor, Bombay University, (ii) Dr. Radha Kumud Mukherjee M. A., Ph. D. Itihās-Shiromani, formerly Head of the Department of History, Lucknow University, member, Council of state, (iii) Dr. A. S. Altekar, Head of the Department of Ancient Indian History and culture, Patna University, (iv) Dr. V. S. Agrawal. M. A., Ph. D., D. Litt. formerly Superintendent, Central Asian Antiquities, New Delhi, College of Indolgy, Hindu University Benares. (v) Mr. Gorakh Nath Singh, ex-D. P. I., Bihar and (vi) Prof. Ram Sharan Sharma, Patna College, Patna and Prof. S. N. Singh, Vice-Principal, and Head of the Dept. of History, G. D. College, Begusarai. I am very much grateful and at the same time thankful to my respected teacher Dr. Kalikinkar Datta

M. A., P. R. S., Ph.D., Head of the Department of History, Patna University, Patna, who initiated me into the temple of research and at whose feet I originally began this humble work of mine. His constant help and guidance has enabled me to pilot all difficulties and it is through his personal interest in my work that I have been able to bring it to light. My special thanks are due to Prof. P. K. Gode M. A., Curator, Bhandarkar Oriental Research Institute, Poona, who has very kindly added a learned and thought provoking Foreword to this humble work and has thus enhanced not only the quality of the book but its intrinsic merit. He has laid me under a deep debt of gratitude. I express my extreme indebtedness and gratitude to Professor Gode, without whose learned Foreword the book would not have been what it is now.

I have to apologise to my readers for the number of misprints and the ommissions of transliteration and exhaustive footnotes. Due to want of efficient proof-readers and the distance between myself and the Press, transliteration could not be made possible. As some of the topics were published in the journals with footnotes and diacritical marks, I thought it necessary not to reprint them here in the same manner due to the reasons stated above. In order to maintain uniformity throughout the book I have purposely left out the footnotes and diacritical marks in other unpublished topics included in this work. A complete and exhaustive bibliography has been added at the end of this book. I could not prepare index due to the paucity of time. I am very much thankful to the Editors of the learned journals and Proceedings from which some of these topics have been reproduced with slight changes here and there. I shall think my labour amply rewarded if the readers help me by pointing out the necessary mistakes and by giving me fresh suggestions. I am always open to correction and I shall acknowledge all such suggestions with thanks. In fine, it is my earnest hope that the following pages will form the starting point of fresh discussion facilitating a new approach towards the understanding of various problems of our ancient

administration of law and Justice, which was once the best organised in the then ancient world.

Department of History, G. D. College,
Begusarai (Bihar)
Kartik-Purnima, 1953.

Radhakrishna Choudhary

Foreword.

During the last twenty-five years there has been quite an awakening in India in the field of Indian literary and cultural history and many energetic ploughmen have been engaged incessantly in the sacred work of scraping out all guess work from the field and planting new saplings in well-prepared pits full of historical data of a dependable type. Among these ploughmen in the field of historical research, Prof. R. K. Chaudhary of the G. D. College Begusarai, though perhaps the youngest, represents the new generation of research students with a rational outlook in their study of the sources of history as will be seen from the collection of his research articles garnered in the present volume. Some of these articles have already appeard in different learned periodicals and volumes. All these articles bear on "*Ancient Indian Law and Justice*," a subject of paramount importance to a free India.

The birth of a free India and the consequent heavy burden of state responsibility, thrown on the ministers of our national Government and the ministers of different States of the Indian Union, have been responsible for engendering in the minds of some of our ministers a desire to know more about our ancient Indian civilization and culture. Accordingly some of these ministers have been equipping their personal libraries with old and new books pertaining to these subjects. The libraries of the Union Legislature and those of the State Legislatures are also being equipped with books of this type. These efforts are really the travails of an intellectual revival of our nation just released from the shackles of bondage. 'All past is possession of the present', said Carlyle and the knowledge of India's past is absolutely essential not only for our helmsmen but also for the masses, who have fortunately preserved our Ancient Indian Culture better than

the so called educated population of India. Those who aspire to shape the destinies of our nation must drink deep at the fountain of ancient Indian wisdom, enriched by foreign impacts during the last two thousand years without losing its identity secular or religions. "*Studies in Ancient Indian Law and Justice*," the subject of Prof. Chaudhary's studies, are an essential part of our ancient Indian wisdom as the very existence of the nation depends on the proper understanding of the ancient Indian Law and the administration of justice in accordance with the spirit of this Law, the essentials of which have been described in detail in the ancient texts on Hindu Dharmaśāstra.

At the time of the British advent in India, a systematic attempt was made by our foreign rulers to understand our ancient civil and criminal law, the fundamentals of which they studied from our ancient law-books of Manu, Yājñavalkya etc. with a view to formulating the principles of Hindu Law and Justice and applying them to the actual administration of Law and Justice in the different provinces of India. The ministers of our national Govt. are now in a better position than our British rulers at the time of the British advent in India. A glance at the Bibliography given by Prof. Chaudhary will show the progress of studies pertaining to Indian polity and its different aspects made by Indian and foreign scholars during the last hundred and fifty years. The crowning glory of these studies is the discovery of Kauṭilya's treatise on the *Arthaśāstra*, the terra-firma of Indian polity and the cynosure of all critical eyes in the field of research in ancient Indian history and culture. In the administration of Law and Justice Kauṭilya's principles remain unrivalled. The skill of a law-giver consists in providing punishment for every conceivable crime, small or great and within the limits of Indian culture prevalent in his time, Kautilya appears to us as quite omniscient in his minute survey of crimes and prudentially stern in providing punishments for them. A former British Governor of an Indian

province described the British rule in India as "the mailed fist behind a velvet glove." This observation amply proves that Kauṭilya's principles of Government have not become antiquated even in the modern world.

Prof. Chaudhari's Studies though not buttressed by foot-notes on each page are in fact based on such notes and hence dependable for the students of the subject proper as also for lay readers, who ought to know more of law and Justice as prevailed in this Bhāratavarṣa in ages past than they have done hitherto. The value attached to public opinion by Indian law-givers as pointed out by Prof. Chaudhary in the last chapter of the present volume is indicative of the soundness of our ancient Indian wisdom which is a product of ceaseless political thought and administrative experience and hence needs to be revered in a free India with its government of the people, for the people and by the people. *Lokarañjana* (Gaining the confidence of the people) was prescribed by the *Mahābhārata* as the main concern of the ancient Indian rulers :—

"लोकरञ्जनमेवात्र राज्ञां धर्मः सनातनः" ॥ 12·57· ॥

In concluding this short Foreword I have to thank Prof. Chaudhary heartily for giving me an opportunity to associate myself with his literary labours, which gladden my heart and excite my admiration as they are the herald of greater literary achievements to follow in future years.

Bhandarkar Oriental
Research Institute, Poona
4th July, 1950.

P. K. Gode.

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Studies In
Ancient Indian Law & Justice

(1) EVOLUTION OF PROPERTY IN ANCIENT INDIA

The Vedic Aryans had settled life. The Society was well-organised. Though materially developed, the country was basically agricultural. The Society developed in its entirety and economic causes and concepts were also aggravated. People had become conscious of the idea of property. The idea of possession as a moral responsibility is a never-ending theme with the Hindu moralists. The Brhdāranyaka Upnishad supplies us the earliest thought on the subject and there we find the reason why property is desired—"..... in the present time one living alone desires thus..... 'may I gain wealth to do my works (sacrificial rites)'..... wealth indeed liked for the need of the self—" Hume makes it the love of the self. Mr. Russel remarks—"The typical possessive impluse is the property."

Brhdāranyaka Upnishad thus gives us a psychological analysis of property. The "artha" in Sanskrit is identified with the term "property" in English. Kautilya defined the word "artha" as 'subsistence of mankind" and a "means of subsistence." According to Sukra the "earth is the source of all wealth and property". Mill accepts the fact that there is nothing recognised as property except what has been produced by labour. Ihering defines property as the "periphery of one's person extended to things". Man's Self is the nave and his property is of the nature of the circumstances of the wheel. According to Green property is a short of extension of man's organs. According to Locke, Labour is the source of property. According to Rosseau, the wants of man increased and he became conscious of them and began to call things as his own.

The possession was a means to the satisfaction of wants In the Aryan society, patriarchical system was in vogue. Gradually

that system was replaced by the kingship. The establishment of patriarchy had already brought in its train the idea of individual property, and a long process of gradual crystallisation had its repercussions on the future trends of things. The individual owner had every right on property and land, though some people thought it to be for common good. According to Hindu terminology, "property is wealth through which all needs are satisfied", and according to Nārada it is a medium of all transactions. Everyone who is capable of living for a common good ought to have means for doing so, and these means are property. Property has been claimed by individual, for life worth living can not be lived without adequate means for it.

The natural stage of property is finally represented in Manu, though we find the germs of its growth in Mahābhārat or even earlier. The idea of ownership of property is inseparable with the idea of its evolution. From the standpoint of economics, labour and occupation are the two poles of origin of property. Occupation and Labour as the sources of property are recognised in Roman Law. In Roman Law, there were certain things which could not be the subjects of private ownership. Such things were called rexs extra commercium. The Buddhist idea of property represents occupation and Labour. Naturally the conception presupposes some sort of ownership. Dr. Jolly says- "the essence and origin of ownership have the subject of philosophical disquisitions even in very ancient times in India". Some believe that the land was owned by God. Manu said, "..the land belongs to him who first cleared it....and pierced it first with arrows.

Manu and Yājnāvalkya consider labour to be the source property. Sukra does not recognise the right of a man by occupation. According to Yājñāvalkya, "acquirement is a claim superior to that of possession". The Buddhists saw in the rise of property the necessity of political Society and the Buddhist School of thought stood not for the equal distribution of property but for its democratisation.

The idea of private property is not the creation of modern

mind. After the establishment of society, the idea of private property sprang up. The contemporary political philosophers of ancient time advocated the theory of private property. The principle was accepted during the time of the Rkveda. As Macdonell and Keith say. "There is no trace in the Vedic literature of communal property in the sense of ownership by the community of any sort, nor is there mention of communal cultivation."

It is thus quite clear that the lands and property belonged to a single individual who happened to be the head of a family and was called Kulapa. Dr. Mukherjee observes. "It is difficult to ascertain the exact kind of legal relationship that existed between the individual proprietor of land and the sovereign of the state....it points to the sovereign prerogative over villages. The king made these grants as the owner of the land...." Property became the chief factor in consolidated society. The Greek Evidence also points to the individual ownership. Both Macdonell and Keith admit the fact that the rules about the inheritance of landed property do not occur before the Sutras. The Statements of Greek writers are inconsonance with Kautilya. The idea of proprietorship is not clear in Asoka's edict though the prerogative over the village is discernible. Inheritance became inevitable and this led to further complications and finally the idea of law originated.

The idea of the evolution of property finally brought in its train certain implication and social complications, the remedy of which was to be found in forms of legal justice. The stability of human society depends upon the harmonious inter-relationship of the profoundest ideas of all its members, which can be easily striven for. The moral and political theories determine the origin and development of law. Though the primitive Aryans had no such organised state and system of administration, we find that they wanted order everywhere and the projection of this idea into all departments of human life was the natural procedure for the early thinkers. They valued the worth of humanity and conceived the notion that "order dwells amongst men, in truth, in noblest places". The foundation of law was laid on this basis. The Vedic people were organiscd and Zimmer admits that the Vedic polity was limited everywhere by the will of the people. The basis of law was democratic. The early Aryans looked upon law as based on the twin roots of religion and agreement of men learned on sacred law. The Samiti or the Sabhā had the authority to declare laws. In the Vedic period it is the law that created state. The Purohitas were generally regarded as lawmakers. Manu held the similar view. The law is the outcome of social and economic conditions of a particular country and the expression of its intellectual capacity for dealing with these conditions and the growth of justice is connected with the social and political organisations. Ethnologists believe that when man adopts identical or common peaceful means of interchanges, creates also rules or laws of exchange.

Law expresses truth underlying conduct and is a standard or ideal. Law is correlated with Justice. The Sanskrit term "Dharma" or Pāli "Dhamma" had been translated into English as Religion or law. The legal historians have accepted the latter. Dharma is from the root Dhri-"to hold". Dharma is so called

because "it holds all beings" with a reference to society. Dr. Thomas has rightly observed. "Such a conception must have arisen very early in the formation and growth of the association of individuals in societies.....covering every form of human action". Dharma is that which produces harmony of work between dualism of human nature yoking the horse of egoism to the care of altruism. Dharma keeps the whole and in order as reins do the horses.

The inner impulse of the living beings marched towards reasonable standards of life and as a creation of the social forces Dharma emanated from the whole to be impressed upon the individuals. Dr. Prasad treats it as the foundation of social order. Law is a means for realising in a particular way some ends derived from the different interests of life. The object of law is the maintenance of peace and order in the community according to the Mānava Code.

During the Vedic period, law was the sublime theme of the people. It brought together the social and ethical ideas and reflected itself in the social aspect. The ascendancy of the priests idealised the practical conception of law but even that idealisation did not deter it from disclosing the world order as a whole. To maintain law in its wider sense, all its legislative activity had to be guided and controlled by the existence of law. Law during the Vedic period covered all fields of human activities and indicated the regulative principles of nature and society. We find a word "rita" in Vedic hymns. According to Maxmuller, the word "rita" signifies order of the heavenly movements. Sir Radhakrishnan is of opinion that "it stands for law in general and the immanence of justice". To the Vedic people there was but one "rita" for nature and man. To them there was no dualism between nature and man. The term "rita" may be translated into "Standard". Law in this period bound the men together into one common string.

The Vedic legal experts tried to develop the abstract side of law philosophically. Law led to everlasting truth and the establistment of the principle that "by law they came to

truth". Law and truth are regarded two sides of one reality. In Atharva-Veda, law is above the gods—'the home and life of the gods".

The principle of idealising culminated in the Upnishads. The Upnishad legal experts started with pure philosphy and enunciated the principle that truth is the one reality and law and order are its different phases. The word "rita" is replaced by "Dharma", though the conception in the same. The conceptions of Dharma and rita (Law and order) are intimately connected and tend to merge in each other for law in scientific sequence and coexistence is another name for order and harmony. Upnishadic period was a golden time for the solidification of Law and it is here that we find—"Law is the king of Kings....nothing is higher than law." Law and truth are one and the same thing—Vedic Seers conceived of order in the very heart of the world but that idea is spiritualised in the Upnishad when it puts the matters pithily in short sentence—"so the whole world has truth as its soul—that is reality." The theological and metaphysical conceptions of law is a fine combination of objectivism and subjectivism. Ancient Indian philosophy was absolute and universal but the relativity of codes applicable to particular communities and guilds etc. was recognised and the underlying principle was based on universal Dharma.

Buddha declared, "Truth eternally exists whether he had appeared in the world or not" Buddhist philosophers deepened the conception of law and accepted the metaphysical theory. The Buddhist conception of law was moral in nature. Dr. Barua observes that "if a man declares what is true they say he declares law, and if he declares law they say he declares what is true." Dhamma underlies or includes law. Stcher batsky is of opinion that Buddhism is a metaphysical theory and that Dharma is transcendental. According to Buddhist conception, Dharma and law are the same. We find a similar conception in Mahābhārat. Dharma is protected by truth. Truth is the container of Dharma and is Dharma itself.

The realist approach to law was finally transformed into metaphysical stage. The nature of law is highly generalised in the later period and it is said to be based on truth and justice. The social ideals of the community materially influenced the character of the law. Law has been interpreted as the means to secure Abhyudaya i. e. welfare in this world. Kulluka speaks of it as "relating to what has to be done to secure visible and invisible goods" —In the words of Mm. Kane, the average Aryan conception of Dharma was that it represented the privileges, duties, and obligations of a man. It was a sociological concept. The end of law was to promote the welfare of men both individually and socially and in order to make law applicable, it generally encouraged obedience by reward and discouraged disobedience by awarding penalty. The conception that law is mainly based on the contract between the state and the people is reflected in Mahābhārat in the following lines— "Dharma is created to put a stop to the harm done by the harmful natured men." At the same time it gives a wider power to the king when it says— "Whatever the king shall fix as Dharma is to be considered actual law." Further it states— "The dictates of good men and superior are the foundations of law"—"King and law are reciprocally protected". The epic law-givers favoured the rise of monarchical power. The king is the cause of prosperity and progress. The authority of the court was invoked for the preservation of rights and liberties and deviation from the path of Dharma brought in its train the award of punishment. State came to be regarded as the highest authority and it is from the state that Dharma and Artha resulted. But this does not signify that the king was the propounder of law. The duty of the state was to make the people conscious of their Dharma. The metaphysical side of the the law is widely developed. Nilkantha has rightly pointed that the metaphysical conception of Dharma in the Mahābhārat is clearly manifested when they conceived of Dharma as the very "cause of Kaivalya." Dharma arose out of Nārāyan and merged back into him.

The Puranic conception is that Dharma arose out of the human necessity and an urge for a peaceful life and hence they enunciated that Dharma is created according to the nature of men. The Purāna gives a realistic touch to law. That the different classes of society should be governed by different laws was the motto of the Puranic legal experts. There was a marked difference between the Common Law and Dharma Law. According to the Common Law, the culprit was was to be punished by the king and under Dharma Law he was also to be punished for the sin implied in the crime. In the Brāhmanical period, the rule of law was not discriminated from the rule of religion.

Kautilya's conception of law was empirical but he, too, could not throw off the shackles of metaphysics. By Dharma he not only meant the practical law but also the righteous law and declared that law was the eternal truth holding sway over the earth. In his time we find "the oriental counterparts of the Greek, Stoic, Roman and Patristic conception of law." Law was a human creation, a creation of society and of thinkers. The realist approach to law was not lost sight of even in later period. Being convinced of the fact that law was a social creation, Mitra Misra gives a practical approach and says, "the confusion of right and wrong is the creation of law.' Kautilya's conception of law is definitely Austinian and we find the echo of epic conception in Kautilya. According to Kautilya, law is a royal command enforced by sanction. From the Greek sources we learn that if the king could make laws, he passed only regulatory laws and not laws making him arbitrary. Kautilya is of opinion that destruction befalls an arbitrary king. Explaining the royal commands, he mentions "thirteen purposes" forwhich royal writs are issued i. e.—"Writs of command, of information, of guidance, of remission, of license, of gift, of reply, of general proclamation." Kautilya's conception of law was chiefly remarkable for giving definiteness and permanence to the best tradition of a people, so well trained in the art of government. He applied the standard of Dharma to

the individuals, society and the state. The ancient Indian conception of cosmic perfection was highly developed in Kautilya's time and the law manifested that if the ruler and the ruled were both responsible, nothing worse was to follow. Kautilya like Keats had a romantic view about the state, which helped every individual in realising his own end in a most organised manner and without any injury being done to the state. Law must be all-embracing and its operation must be intelligent. The law according to the Roman ideas rested on double foundations of divine revelation and human advance and according to another competent authority law rested on the twin *foundation of the law of Nature and the law of* revelations. All societies place at the centre of their conception the idea of the guidance of providence. According to Kautilya, Dharma (Sacred law), Vyavahar (Evidence), Charitra (History) and Rajsasana (Edicts of the king) are the four legs of law. Dharma is the eternal truth, Vyavahar is the evidence of the witnesses, Charitra is the tradition and Rajsasana is the order of the king. We find a similar theme in Narada, according to whom virtue, judicial proceeding, documentary evidence and an edict from the king are the four feet of law. The Arthasastra of Kautilya revealed a code of law proper purely secular with the express provision that royal law could supersede the Dharma law. The secular laws or king's laws in the Sutra period were different from the Dharma law. The Dharma law cannot be treated as the real origin of Hindu law. Asoka promulgated different laws establising equal treatment of all subjects in the matter of law and punishment.

The conception of law in the Smriti literature attained its highest perfection in the realisation of unity of the individual and the society. Law must mean the normal condition and progress in a most organised fashion. In the Smriti literature, the institution of caste permeates the law and the judicial system of the time. Jolly says that in these books their class demands have been clearly expressed. The Smriti Jurists believe that the law arose out of agreement (Samaya-Chārik). The importance

of man in determining the character of law is recognised. Law is a contract based on the agreement between the ruler and the ruled. Law is what is unanimously approved in all countries by men of the Aryan Society. Law is whatever is practised and cherished at heart by the virtuous and the learned who are devoid of prejudice and passion. Law is the practise of the Sisthas and is necessary to make a man honest. *In Smriti literature we find the development of* positive law or Vyavahar. Traditional law is called Vyavahar and it arose out of the neglect of duty on the part of men. Vyavahar also means the promulgation of laws by the king. Bṛhspati also enunciates the flexible law. Manu says that the king must refer to the sacred texts and then to the old customs. The Mimansā philosophy supports the theory of positive law. According to Mimansā, Dharma is the scheme of right living. Dharma leads to happiness. Radhakrishnan has rightly observed : "Mimansa rules are very important for the interpretation of Hindu Law."

Another development is the interpretation of law as good conduct or Sadachar. The custom of the majority of people (Lokāchār) was treated as the common law of the country. Custom was the determining factor and the original foundation of law. The conception of law was not merely sacerdotal but had a strong aesthetic background as in the case of the Greek idea of law. Theology had a prominent place in the evolution of law.

(3) ASOKA'S DHAMMA.

The personality of Asoka occupies a unique place in the history of the world. He was the torch-bearer of Indian civilisation and was opposed to all sorts of inequalities and was the pioneer of the movement for liberty, equality and fraternity. His conception of Dhamma was not a spiritual doctrine but a practical proposition and as Mr. Smith observes, "the edicts are devoted mainly to the exposition, inculcation and enforcement of a scheme of practical ethics as the rule of conduct which Asoka called Dhamma." Dr. Tripathi admits that Dhamma was a code of conduct to make the life happier and purer. Dhamma in my opinion was the science of life. Science is an organisation of directed thinking.

Buddhism primarily is a religion of conduct and not a religion of observances and sacrifices. Nor it has any theology. No attempt was made by Asoka to found Dhamma upon any metaphysical or theological basis. Dhamma has also been identified with the term "Justice". Dhamma was a practical proposition which aimed at educating the people into a common view of the ends and ways of life and in this respect Asoka was the first monarch of the world. He worked for the needs of the people and was first servant of the state.

"Be a light unto thyself. Decay is inherent in all things composed of parts-work out your salvation with diligence". This is the essence of Buddhism. These lines from the mouth of the founder of the faith are clear indications of the fact that "man is the architect of his own fortune" and there is no supernatural agency to guide his destiny. With the support of Asoka, Buddhism was brought down to the level of the people. The word Dhamma has been taken to mean the sacred law of piety. Asoka's emphasis on self-examination and adherance to one's own faith justifies my statement that Dhamma was not a dogma but a guide to action. Some scholars have tried to prove that Dha-

mma was some sort of compromise between Brāhmanism and Buddhism and they hold that Asoka granted toleration to all sects in order to pacify them because he made Buddhism a state religion, which was yet a minor sect. Dhamma constituted the essence of all religions. The Dhamma implied that everywhere the king shall favour the afflicted among his people as a father his sons. Asoka was a paternal despot and he blended in himself the duties of the monarch and the missionary. He says, "certainly, just as (a person) feels confident after making over his offspring to a clever nurse....even so have I appointed the Rajjukas for the welfare and happiness of the provincials" (Pillar Edict IV).

The ideal feeling relation between the ruler and the ruled is desired by Asoka to be one that subsists between the loving parent and loving sons. This parental feeling is expected to be reciprocated by the filial feeling of or attitude or the other. This paternal conception of kingship is found in Kautilya when he says, "in the happiness of his subjects lies the happiness of the king, and in their happiness his welfare." The basic principle of Dhamma is readiness to action. The Benthamite conception of the greatest good to the greatest number finds its fullest expression during the Asokan period. He wanted to see that all were free from innate proneness to sins. Asoka sought the aspect of concepts to be expressed in the power of action, effort and fortitude. Dhamma meant action.

Dhamma offered a practical proposition and it was a sort of guide which the members of the monastic community took into consideration when any necessity arose. Fleet is of opinion that Asoka's Dhamma is a form of Rajdharma consisting of politico-moral principle. Drs. Smith and Mukherjee, while recognising Dhamma's practicability in life, assert that the principles promulgated by Asoka are common to all religions. According to Dr. Barua, it is consistent with the principles of secular Buddhism. He says, "Dhamma is a body of rules which carries with it the sanction.....or the express will of the king and the state."

Extremism in thought and action was the order of the day. Asoka propounded his theory of middle method, which grew out of a changed ideology of life. This method of middle path inclined toward toleration, so long as their actions did not exceed the limits of patience. His scheme of toleration offered a scheme of active cooperation (Samvāya) among all sects of people for their development. This clears the path for all sects and exponents of different faiths to come together and discuss their thoughts in a reciprocally helping way. In Asokan conception of tolerance, we find the scope of self-development. He urges that men of all sects should learn and study all other's doctrine so that they may be well-informed—(Bahusruata). Sectarianism does not find any place there. He personally went to the country folk to explain the significance of Dhamma and propounded the theory of universal brotherhood. His conception of religion was synonymous with duty. He propagated the toleration of thought and faith broad-based on knowledge, comparative study and the powerof understanding and appreciation. His own faith did not stand in his way of helping all sects and honouring other religious leaders. His non-violence moralised politics and synthesised the individual, society and the world under the dominant idea of the respect for all life. His aim of life was ethical reverence and he wanted entirely universal and absolute purposiveness with regard to the maintenance and enhancement of life.

The philosophers were held in high esteem. They were not idealist philosophers but practical scientists and they forewarned the people about drought, wet weather, propitious winds, health, disease and other important matters so that the people might make adequate provision against a coming defeciency.

The highly extolled practice of "Samajas", prevalent during the Epics and Mauryan period were deprecated by Asoka and Vihāra-yātra or the pleasure trip was replaced by Dhamma-Yātras or the pilgrimage of the piety. The sound of war-drum was replaced by the sound of Dhamma. By propagating the motto of love and peace, he put into practice the Upnisadic

conception of neighbourhood and love, i. e. "One has to love one's neighbour, because his neighbour is his very self" (Deuessen "Philosophy of the Upnishads" P. 47). We find a similar expression in Sukranitisar, "one should always master the world by love, service, affection, simplicity and charity." Doers of good never enter ruin. Asoka wanted to make a man perfect morally and spiritually. Dhamma guided the day-to-day activity of the common people. The great example of ethical idealism in the whole of human conduct, action and institution, influenced not only the contemporary civilisation but also helped the posterity. Asoka stood for the judicial equality of punishment and procedure.

He gave expression to the means of moral persuasion by means of inculcating the fundamental principle of piety, the proclamation of their usefulness and the tangible work of public utility. The principle of liberty was safeguarded and the rights of people not infringed with. He personally waited upon the various sects and was of opinion that moral and cultural progress of humanity greatly depended on the enlightenment and earnestness of those who were the real educators of the people. Dignity of labour was valued. Practical Statesman as he was, he did not interfere with the activities of the Brāhmanas and Sramanas. He was perfectly right in granting the money and other forms of Dāna, because they utilised the amount in furthering the cause of education and culture and his grant was something like a modern State-grant to education. He was of opinion that if teachers were in distress, the cause of human progress would suffer and inorder to redress their grievances and sufferings, he appointed Dhamma—Mahamatras to look after them, besides carrying on their noble missions. Their chief duty was to explain to the people the necessity of disciplined life and the implications of Dhamma. Asoka Set up Dhamma-stambhas or the pillars of morality and got the principles of practical law of ethics or Dhamma inscribed on them.

Material welfare of the people formed an important part

of the State-programme and of Dhamma. The people were given aid in times of cultivation. He constructed reservoirs of water, and planted trees and groves and established hospitals for men and beast. The main principles of Dhamma were :—(a) respectful attention to parents, preceptors, teachers, seniors, men of experience, high personages, and honouring them in all humility, (b) Seemly behaviour and liberality to the Sramanas, friends, associates, slaves and kinsmen. (c) Parental feeling towards the subject, (d) Non-slaughter of living being, (e) True charity (f) compassion (Dayā), (g) Truthfulness (Satyam), (h) Purity (Saucham), (i) Saintliness (Sādhutā), (j) Self-control (Sanyam), (k) Gratitude (Kritagyata) and (l) Steadfastness (Drih-bhakhtita). He was no passive spectator of events, lost in self-contemplation and self improvement but he laboured hard at public business. He appreciated principle of hearty cooperation in helping the growth of all in the essence of fundamental of things. Freedom has been defined as the recognition of necessity and he recognised this necessity and in this respect he was far in advance of his time. According to Asoka no duty was more important than promoting the welfare of all men, and he tried to discharge that particular conception of duty. Asoka wanted to make people happy in this world and in other. Rev. Dr. Copleston in his "Buddhism, primitive and present," observes. "He was not merely the Constantine of Buddhism, he was Alexander with Buddhism for Hellas ; an unselfish Napoleon, with "Neṭṭam" in glorie." He struck the note of Ahimsa and good will amidst the still reverberating doctrine of diplomacy and conquest. An unparalleled aureola of light was shed by this philosopher king round the country of his birth through his humane policy and wonderful activity. He proclaimed "There is no higher duty that he welfare of the whole world." As a result of his work, India gained in cosmopolitanison and humanitarianism, which are the basic principles of Hindu Society (Bhandarkar p. 247).

4. THEORY OF PUNISHMENT IN ANCIENT INDIA

Manu has rightly observed, "Punishments have been prescribed by the sages, so that righteousness may not be outraged and unrighteousness may be cured."

General conception about punishment was that it should help the man or the criminal to reform himself according to the codes of Dharma. This does not mean that punishment was merely religious stick to terrify the people. Punishment was meted out with accuracy and those who violated the king's peace or justice were heavily punished after being only examined by the court. Punishment signifies Danda. The adminstration of justice pre-supposes the existence of an authority. The principle of authority is an eternal support of the human society. Danda is the important aspect. The state must have some co-ercive power and viewed in this light we can see that Danda is the coercive power of the state. The true "Dandniti" was first adopted by Usānasa and the book "Dandniti" ascribed to Prajapati is mentioned in Mahābhārat.

Prajapati is regarded as the creator of Danda. Danda was created by God Shiva after long concentration and the even the Science of Politics was made out of Danda. Sometimes Danda is identified with Dharma and it is said that Danda is the soul of Dharma. Thus the we find that the theory of punishment is basically theological and metaphysical and an attempt was always made to develop its abstract side in its entreity. The principle of Danda is Omnipotent. One particular reason behind the religious colour of Danda is that religion gave it authority, or sanction. The Hindu conception of sanction corresponds closely to the modern concept of sovereignty. Speaking about the authority of Danda, Manu observes, "The whole world is rectified by Danda and even the Gods and demi-gods are subject to its authority." Manu identifies Dan-

da with Dharma and it is through the sanction of Dharma that all men enjoy the world. Danda is the authority which represents the state-will and as such it has got not only a legal pre-eminence but also a moral pre-eminence. It is the fountain of social peace.

In order to stabilise the society it was thought proper to rest some authority in the state. The state was armed with the power to co-erce, restrain and punish according to take note of But in doing so the state was in duty bound to take note of Dharma and do accordingly. Hence the practice was always guided by theory. Danda was guarantee of universal happiness and reighteousness. By awarding Danda it was thought that it was designed to correct the human vices. The Epic conception was that Danda had two functions "Its protects and governs." Manu holds the same view. 'Danda saves Dharma, Artha and Kāma." Ethical interpretation of the term leads us to believe that Danda acted as guide for all and helped men in choosing between right and wrong. Dharma was really a well-applied Danda for it paved the way for sound morality. Danda was a great lustre. It could not be held by despots. It struck down the king who swerved from law. Only a king who was honest could wield Danda. Danda was identified with administration and according to Manu it was vested in the Amatya. There was an officer to execute Danda into practice. The officer was known as Danda-Nayak or the Minister in charge of administration.

Danda is derived from the term "Dama" 'to restrain' ; the means by which a person is restrained from misconduct. Danda is a means of purification, and the punishment awarded to the offender is for the purification of the state. Kautilya treats Danda as an instrument for bringing people under control. In Ancient India Danda was simply a part of the four-fold policy of the State i.e. Sham, Dam, Dand, Bibheda—(Reconciliation, gift, Punishment, and Division). Danda is extolled and deified in Dharmasastra literature. Gautama treats Danda as reforming or correcting influence.

King was empowered to inflict only Artha and Badha Danda (Fine and Corporal Punishment). Some authorities hold the view that the right of inflicting punishment was the prerogative of the king but a glance at the republican constitution of ancient India will dispel this notion. In the Republican System the Raja or the President alone had the right to convict the accused but in doing so he was to be guided by the Paveni-Pustaka or the Book of precedents. Thus we find that the king honoured the Law of the Land.

The ancient Indian theory of punishment was based on the central idea that punishment for wrong doing was to be meted out by the king for the preservation of Social order. Dr. Sen holds the view that there is no tinge of the theory of retribution or vengence and points out that in the matter of punishment the directives given by Hindu legal experts compare favourably with the advanced systems of today, in taking into account not only the objective circumstances of the offence but also a subjective limitation of the offenders.

The ruler in Ancient Indian polity is called Dandadhar. Danda is considered as an essential attribute of royalty. The king regulates the state by wielding the weapon of Danda. Danda is Supreme in Royal Dharma. Danda brings into existence well-regulated and well-planned society, recognises rights and duties, privileges and law.

The view of Dr. Sen does not hold good in the light of moderns researches. Kaegi has rightly observed, "The hymns strongly prove how deeply the prominent minds in the people were persuaded that the eternal ordinances of the rulers of the world were as inviolable in the mental and moral matters as in the realm of Nature and that every wrong act, even the unconscious, was punished and sin expiateds.' The vedic conception was that it was a retribution from Heaven. Expiation and Danda are spoken of as twin modes of purification. Retribution in form of expiation was very common during the Vedic period. Expiation is logical part of the system based on religious and metaphysical theory. The divine judgement was

based on the belief that all guilt was punished by God. The existence of the true "Vaira-Deya" or Wergeld proves the payment of compensation. Retribution in its practical character was present in the Vedas. In Mahabharat, a tinge of retribution can be inferred from the following, "To take revenge, on him who takes revenge, to retaliate when struck and to do harm in return for harm."

The punishment by oath and ordeal was also known. According to Jolly the system of Oath was prevalent even during the time of Ṛkveda. When the right argument failed, ordeal had to be used for the investigation of cases. The principle of purification is also advocated by Purana.

Another marked feature of Danda was the restraining principle. Gautam has opined that the creation of punishment was for checking the miscreant and wrong doers. Kautilya and Sukra suggested the practical means of enobbling the criminal soul. So far stringency is concerned Kautilya is no less but his views are reformatory. His conception is that crime is inherent in social make up of a man and it spreads from person to person as a disease. He treats crime as contaminating disease and suggests that the criminal must be reformed by finally doing away with the criminal tendency in him. He says, "when the guilt is got rid of, there will be no guilty persons, but when only a guilty person is got rid off the guilt will contaminate others." Kautilya wants the extirpation of those who desire the evil of the kingdom. He saw germs of discipline in punishment. His inner motive was to educate the people and in this respect he was in line with Aristotle who viewed punishment as educational discipline. He is of opinion that punishment must be proportionate to guilt.

Sukra's idea was that punishment leads to the eradication of bad practices and that the king should administer punishment for the furtherance of morality and religion. Kamandaka justifies punishment for the purpose of justice.

5. ADMINISTRATION OF LAW & JUSTICE IN ANCIENT INDIA.*

Every society, when itself in danger, instinctively tends to enforce conformity in thought and conduct upon its members, and to suppress all thought and conduct that might disturb the internal harmony of the group. To the primitive psych the social group is not so much a political organisation as a brotherhood, a communion composed of initiates. The evolution of property brought into existence the various types of institutions e. g. Family, State and the Government. Primitive society was socialistic. The family property was the joint property. The history of human society is that of a development following very slowly one general law and that the variety of forms of life—of domestic and civil institution—is ascribable mainly to the unequal development of the different sections of mankind.

The Aryan society was looked upon as an organism which depended on the co-operation of different classes and sections. The Hindu state was thus more social than political like many of the States. Co-mixture of politics and religion everywhere marks the transition from primitive idea of cosmology to rational explanation of the forces and the factors regulating the phenomenal world. Politics came to be dominated by ritualism.

In the Vedic period Gram was the basis of social life. The idea of justice arose out of the willingness of the villagers to punish the offender. Justice has been defined by Plato as the virtue of an individual and sometimes as the virtue of state. In ancient India law and justice were allied terms. State was the highest organisation. State originated in the bare needs of life and existed for the sake of good life. Law followed and judiciary evolved out of the organised State. Law, according to Aristotle, is a surety to another of justice. Justice was the bond of men and was the principle of order in political society. The

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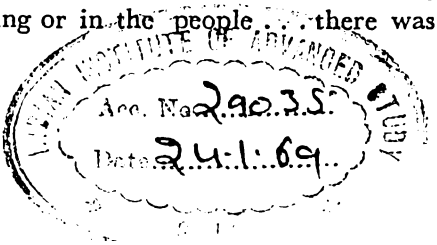
making of Laws was in the hands of entire population and each was a Scientific Social lesson, taught by experience and necessity.

The Vedic political constitution consisted of (a) Priestly aristocracy independent of the king and exempted from punishment for offences and from taxes and toll on land and other property, and with acknowledged claims to protection from hunger, sickness, cold or heat, (b) King and (c) State-assembly consisting of priests, nobles and common people with powers to elect and banish kings, to restore banished Kings and to have an authoritative voice on all political and judicial matters of the state.

The history of the administration of justice among the Indo-Aryans appears to mark the gradual evolution of the state. In the Rikveda, we find the institution of money compensation for offences. The gradual crystallisation of the larger part of the society into village communities favoured the growth of local particularism, strengthened the spiritual and judicial authorities of the Brahmanas and as result of that society became more complex and developed into an elaborate organism. The village formed a social and political unit in eyes of Law. Certain taxes had to be paid by the villagers and the village headman regulated the local police and taxation. The communal life of ancient sought to express itself through a variety of institution. The Vedic society was sufficiently settled and there was a differentiation of the functions and occupations among the people. The absence of paramount power till the 4th century B. C. accounted for the permanence of popular element in ancient Indian Judicial System.

The conception of Law in the Vedic period was that of a body of precepts accepted as suitable for the guidance of human action. The use of the term Jivagraha and Ugra shows that it wast the function of the executive to administer laws of the land. The judicial organisation was not very elaborate. Macdonell and Keith remark, "There is no trace of organised criminal justice vested either in the king or in the people . . . there was some



sort of judicial procedure in vogue in the later Vedic-period." Elders of the village were appointed to decide the cases. They were not judges in the real sense of the term as they decided cases by arbitration. Though there was a distinction between the Civil and Criminal law, justice as a branch of the government was in the making. Crime as enumerated in the Vedas, include the slaying of an embryo (bhruna), the slaying of a man and a Brāhmana. According to Panchavinsa Brāhmana, treachery was to be punished by death. The King was the source of the criminal law and he clearly retained this branch of law in his own hand in later times. Civil law was not very much developed. Some reference about plaintiff, defendant and judges can be traced in the Vedic period. Those terms simply refer to what is probably an early form of judicial procedure. King was regarded as the Chief Judge. Laws of Inheritance can not be traced before the Sutras. The Brāhmanas and the Māghavanas (rich patrons) dominated in the Sabhā. The Purohitas had great influence in matters of secular importance. Legally the position of the Brāhmanas became strong. The interpretation of the terms "Jnātra (witness), Pratiprasana (arbitrator), Pratistha (Sanctuary), Prasna (Pleading) Madhyamasi (Mediator), Jivagrah and Ugra etc. may throw some more light on the judicial history of the period. Spies seem to have been largely employed not merely to ascertain validity or invalidity in the statement of parties and witnesses in criminal law and civil cases tried by the king or the state assemblies but also to gather correct and reliable information as to the movement of tribal settlement or inimical tendencies of disposition.

King's purohita advised on points of law and facts were judges by the Sabhāsadas selected from the Brahmanas or the Elders of the towns or guilds in the later Vedic and Brahmanical period. The legal system arose partly due to the recognition of principles, which guided the conduct of various groups of society and partly due to the recognition of old customary laws. Law comprised the sum total of rules guiding the relationship subsisting between the individuals and their functions

relating to the whole. The Brahmanas idolised law and order and opposed violent charges.

Justice came to be administered in the name of the king. King was the fountain head of justice and the highest judges in civil and criminal matters. Local bodies and corporate organisations had minor jurisdiction. The king indeed was the upholder of sacred law. Divine law was prevalent during the Upanishadic period. The Brahmanas took a leading part in the judicial matters. To the king belonged the duties of lawful punishment, the administration of justice and the appointment of State-officers etc. The basis of king's authority was sought in his fulfilment of fundamental needs of the individual and society. The King was the custodian of social order and was expected to see that everyone in the kingdom kept to the track laid down for him.

The code of Bṛhspati has been regarded as the most authoritative in ancient India. The epic distinguishes the theological and legal teachings of Bṛhspati. In the epic Draupadi condemns fatalism and despondency. During the time of Mahabharat, administration was carried on with the help of Mantri-parisad. Ministers were men of high character. King was assisted by the Sāmantas (subordinate ruler), Yuvaraj, Porohita, Commander-in-Chief, Chamberlain, Pradesta (Chief Justice), Dharmadhyaksa (Superintendent of Justice), Dandapala (Presiding Judge of Criminal Courts or Chief Police), City Prefects, Superintendent of Prisons, Warden of Forts etc. There was a separate department of justice. Officers were instructed to detect crimes and maintain order within their jurisdiction. Each officer was responsible to the next higher authority. Vyavahar laws were equally authoritative with the Dharma law. Bṛhspati prescribed heavy fines for dishonesty and rigorous punishment for all crimes. He advocated state craft as a means of administering justice. All writers on Smriti depended mainly on Bṛhspati for his lucid treatment of civil procedure. He divided witnesses into Krta (appointed at the time of transaction) and akṛta and subdivided each into six divisions.

Buddhism showed a moral law not merely as a veto for immoral doer but also as a guide for the man willing to do well. Dhamma was bound up with whole life and was to be each man's guide. Buddhism was a humanitarian religion based on justice, charity and love. Buddhist Dhamma regulated man's life and also social and ritual activities. When Buddhism arose there was no paramount sovereign in India. The tradition tells us how criminal law was administered in the powerful confederate clan of the Vajjians by a succession of regularly appointed officials. Justices, lawyers and rehearsers of the law-maxims, the council of representatives, the general, the Vice-consul and the Consul himself could acquit the accused. The consul awarded the penalty according to the Book of Precedents. During the Buddhist period the criminal justice was administered by experts through the President and the Elder of the Kula Courts. According to Bhrigu, the deciding authority in a Gana was a Kulika or a Kula, though kula is used in the sense of a jury by Katyayana.. The Mahapari-nibbansutta mentions two other Judicial officials among the Lichchavis, e. g. Athakulaka and Suttadhara. In some Jatakas, we find Purohita performing Judicial functions. According to the Dharma-sastras, Purohita seems to have been associated with the king in the administration of justice and was liable to fast and penance, if there was a miscarriage of justice. The Viniścayamatya was a criminal officer and combined police and judicial functions. From Jatakas, we learn that the cases were tried by Grāmbhojakas and appeals by Purohita, Upraja and the king. Common law also played an important part. Under the Common law the culprit was to be punished by the king and under the Dharma law he was also to be punished for the sin implied in the crime. The ideal of the right administration of justice, prevailing in the time of Jātakas, resulted in the fall of litigation. A reference to the administration of justice is also found in Pali work and in this connexion, the famous case of Anath-pindaka vs. Jeta, the prince royal may be referred. That case was decided by the court of Srāvasti, capital of Oudh. Justice was pure

and the rule of law was prevalent.

The conception of administration of criminal justice went hand in hand with the police jurisdiction and the one completed the other. Justice was equitable. The Mauryan Empire brought in its train a stabilised judicial machinery. During that period, Grām was the lowest unit of administration. Both Megasthenese and Kautilya testify to the severity of Penal laws. Offenders were punished with fines and Kautilya prescribes death even for a petty theft by a government servant. King was not the maker of law, but its guardian. The validity of law depended on their conformity to an intrinsic standard of equality. Kautilya advocated the validity of Rajsasana and in this respect was followed by Narada and Harita. As in the west the power of king was glorified, so in the east, it is quite probable that Kautilya might have been influenced by the west in adoring the king's authority and power. The exaltation of royal edicts indicates that the king controlled the judicial machinery. Rostovtzeff (in his "Social and economic History of Hellenistic world") observes—"This variety of juridical system was dominated by the royal legislation and jurisdiction. It is evident that a royal law, order or regulation, if it conflicted with the other laws was always regarded as over-riding them and that the royal verdict in law suits was final."

Kautilya planned a well-organised judiciary. In Books 3 and 4, Kautilya has dealt mainly with the administration of justice. There were two Courts viz. (1) Dharmasthiya (or the Civil Court) and (2) Kantakasodhana (Criminal Court). Dharmasthiya was organised and directed by Amatyas in alliance with the Dharmasthas and its main function was to dispose of such cases as arose out of the violation of traditional rules and regulations and it could impose only nominal fines. Its scope was limited to (a) Disputes concerning the non-performance of agreement, (b) Law of marriage and woman's property, (c) Law of divorce, (d) Law of Inheritance and Succession, (e) Law of Buildings and Houses, (f) Law of household property and pasture lands, (g) Law of debts, deposits and slaves, (h) Law of

cooperative undertakings, of sale and purchase, ownership etc. Prof. Rangaswami Aiyanger translates these two terms as (1) (Dharmasthiya) common and canon law courts and (2) (Kanta kasodhan) as Police and Administrative Courts. The Dharmatsthiya dealt with Vyavahar and Civil litigation. Justice in that court was administered by royal officials, advised by the learned Brahman Jurists. The Kantakasodhana was a very important Court. It looked to the safety of the empire and tried such cases as arose out of the violation of the state laws and regulations. It had three main functions :—(1) to protect the interests of traders and artisans; (2) to find out the ways and means and to do away with the national calamity, and (3) not to allow people to maintain themselves by sordid means. Other functions were to (a) find out the culprit with the help of the spies, (b) arrest one while committing crime and (c) keep safe the government departments. The officers of the Central executive conducted these courts and here the Jurists were not consulted. The officers of this Court could get the facts by torture and other means. Even treason was tried by this court. Prof. Nilkanthasastri observes, "The Kantakasodhana courts were a new type introduced to meet the growing needs of an increasingly complex social economy and to implement the decision of a highly organised bureaucracy on all matters that were being brought under their control and regulation for the first time. These courts were intended to protect the state and the people from the baneful action of anti-social persons (Kantaka). It was a quasi-judicial department and its work had more in common with the functions of a modern police organisation than a judiciary." It was the corner stone of the entire administrative system. Asoka granted to the Rajjukas independence in the award of honours (Abhihāle) and punishment (Dande) in order that they might discharge their duties confidently and fearlessly. They were expected to maintain uniformity (Danda Samata) as well judicial procedure (Vyavahar Samata). The principle of the independence of judiciary was recognised during the reign of Asoka.

Jury system was a defacto institution. Dr. P. N. Banerjee accepts the prevalence of Jury System and observes, "The three or five members of the judicial assembly acted as jurors as well as judges but the final decision rested with the Chief-Judge." The Adhikarins, Sresthins and Kayastha formed the jury of the Court and trial by jury was limited to criminal cases only. Agnipurana says, "A court should neither entertain nor hear a cross-case without first deciding the original one, nor should it take up a case or a suit dismissed or rejected by another tribunal of competent authority". Agnipurana gives a definition of law-suits as follows. A law suit is determined by a reference to four things—(a) chaturhita, (b) chatursthanam, chatusadhana and chatuspada and all these are connected with four different parties (Chaturvyapin) and help the society in a fourfold way (Chatuskari). A law suit involves the cooperation of eight persons (astanga) at the time of its trial, proceeds out of 18 causes of action (astadaspāda), is divided into a hundred subdivision (Sataka), owes its origin to three different sources (Triyoni), admits of two sorts of statements (dvyviyoga), is contested by two parties (duridran) and is decided by the determination of two sorts of issue (dvigati).

The judges were expected to observe eternal law of justice and decided all the cases of disputes without partiality. Justice being destroyed shall destroy the destroyer. Justice being protected shall protect the protector. The King was not above law and he was liable to punishment. Laws were for the man to realise the four aims of the individuals viz., Dharma, Artha, Kama and Moksa. In the Smriti we find eighteen causes of dispute. There were civil and criminal causes also. Trial by ordeal was also prevalent. Manu mentions ordeal by fire and water. Yajnavalkya and Narada mentions three more i.e. scales, ploughshare and poison. Punishments were of different kind, though Brahmana enjoyed privileged position. The King received petition from his subjects and decided cases. Manu believed in the divine origin of the monarchy. King wielded Danda only to maintain and enforce Dharma. The King

maintained a separate department of justice. The judges of the royal court were always appointed by the executive who were competent to demand the necessary personal qualities required in a judge and select him for the office. The judges were selected from the lawyers and the Brahmanas. The main functions of the Judges were to (1) apply law to cases (2) to interpret its technicalities and (3) to advise the King on legal matters, morality and ethics. The Mrchchkati says, "A judge should be learned, sagacious, eloquent, dispassionate, impartial; he should pronounce judgment only after due deliberation and enquiry ; he should be a guardian to the weak, a terror to the wicked, his heart should covet nothing and his mind should be intent on nothing but equity and truth" (Act IX; Wilson's translation). The judges were called Dharmadhakarin, the Pradestr or Pandita. Chief justice was called Pradvivaka. He presided over the royal sabha, the highest court of justice. He was expected to be conversant with eighteen titles of law. The independence of judges was unquestioned and his tenure of office depended upon good behaviour. The administration of justice was separate from the executive and generally independent in form and ever independent in spirit. The judges were helped by the community.

The King also acted as the judge. The king should learn the right law for each caste from authoritative person and in doubtful cases take the advice of learned Brahmanas. The King shall daily repair to the hall of justice along with the learned Brahmana and experienced councillors and shall examine the cases. The king with the Council was responsible for the injustice. According to Narada the thorn of injustice may be removed only when the whole college of judges are unanimous in the decision.

The local administration of justice was more or less a Panchaiti System based on democratic procedure and practice. The gradation of court was as follows :—(1) High-Court of Justice; situated in a capital with King at its head. (2) Courts of justice with Pradvivaka at its head. (3) Other courts, where

judges were appointed by the King and whose jurisdiction was limited to small towns and cities. Besides that there were local courts such as Puga, Sreni and Kula. Brhapati's classification of courts was as follows :—(1) Dynamic, (2) Static and such courts where the King delegated his powers. Bhrigu added a further list of courts whose judicial importance cannot be ignored. They are :—(a) courts, where the village people discussed their own problems, (b) courts, where the representatives were elected by various organisations, (c) courts of traders, (d) courts of citizens, (e) courts where village folk acted as judges and citizens acted as judges, (f) courts, where the authority on Ethics and moral science acted as judges.

According to Sukra, the procedure in case was as follows :— (a) Petition by the complainant, (b) written statement submitted in defence by the defender, (c) defence of both sides, (d) decision by the judges.

In cases of constitutional importance, judges used to consult Smritis and old judgments. The old judgments were preserved for the guidance of judges and legal experts. Witnesses and Oaths played an important part.

Salient features :—King was the fountain head of justice and his main judicial function was to hear appeals. Kautilya and Sukra have fixed a time for hearing such appeals. He was thought to be impartial in awarding punishment. He was called Dharma pravartaka. If the judges were implicated they were tried by the superior administrative courts and the judges of such courts were known as Samarhartā and Pradestagana. Constitutionalism and the rules of law were the characteristic features of Hindu Judiciary. All were equal in the eyes of law.

"Know thyself" has been the basis of Indian philosophy. The knowledge of self leads to the phenomena of crime. Ever since the establishment of human society, the people have tried to repress the anti-social nature. Viewed from the standpoint of social development, the study of crime seems to be an interesting subject.

According to Bentham, Austin and Dr. Mercier, the crime is a voluntary act but this definition is not accepted by Dr. D. A. Stroud. The word 'crime' is "derived in two ways—(a) From a latin word meaning to accuse and (b) from a Sanskrit word 'Kri' to do. Lombrasso accepted the latter derivation because it helped him in proving that crime was a part of normal life in primitive society but in the light of philological principles this definition is not sufficient to prove his ancient social groups. Crime affects somebody objectively and not the doer alone. It is therefore an act causing harm to somebody objectively. A criminal is he who flouts the authority of law, sanctioned by the community. Crime is based on the natural desire of mankind to avenge a wrong. A crime in India not merely involved harm to society but also degradation or loss of caste to the offender and thus made him unworthy of social communion and unfits to perform spiritual acts. Crime in its scientific sense is a natural phenomenon and has its origin in the conflict of the self-seeking habits of the individual with the common customs of any social groups that ensure its survival in the struggle for existence. It is necessary to write something about the crime and punishment in primitive and savage society.

In the primitive society when one did not realise being hurt indirectly through an individual member thereof, there was no modern conception of crime. The conception of crime in primitive society is still controversial. Conservatism was themo st important trend in a primitive society. The crimi-

nal aspect of law in savage communities was perhaps vaguer than even civil aspect, the idea of justice in our sense was hardly applicable. Theft was classified into two concepts—(a) to catch hold of thieves, which law was applied to unlawful appropriation of objects of personal use, implements and valuables and (b) theft of vegetable goods. Here we have to remember that savagery was not ruled by moods, passions and accidents but by tradition and order. Viewed from this standpoint, we come to the conclusion that the main function of law in savage societies was to curb certain natural propensities, to hem in and control the human instincts, and to insure a type of co-operation based on mutual concessions and sacrifices for the common end. In that society law needed no enforcement but was followed spontaneously. Mr. Hartland says that the core of legislation in a primitive society was a series of taboos. The general belief in the certainty of supernatural punishment was quite sufficient to prevent a breach of tribal custom. Stein Metz insists on the criminal character of early jurisprudence, on the mechanical, rigid and almost undirected and unintentional nature of the penalties inflicted. The French sociologists Durkheim and Mauss opine that responsibility, revenge and all legal sanctions of the primitive society were founded in the psychology of the group and not of the individual. Their civil law consisted of a binding obligation, regarded as a right by one party and acknowledged as duty by the other, kept in force by a specific mechanism of reciprocity and publicity inherent in the structure of their society. Dr. Lowie observes " . . . . . the unwritten laws of customary usage are obeyed far more willingly than our written codes or rather they are obeyed spontaneously".

Conditions in India were different. The discoveries at Harappa and Mohenjodaro have proved the existence of a settled society. The key to the whole east was the absence of private property in law and we find the existence of primitive system of communism below and a strong central government at the centre. With the growth of monarchical institution, the

responsibility of the sovereign authority came up prominently in the administration of criminal justice. The state asserted its power in proclaiming certain acts punishable, fixing penalties for such acts and in punishing the offenders. It is difficult to draw a line between a crime and civil wrong in India. Mr. S. Vardachariar has rightly observed, "The Hindu law insists on the duty aspect of the situation rather than on the right of the other party and the role assigned by it to the king is the maintenance of the moral order as well as of the social order." Dr. P. K. Sen has emphatically stated the existence of Penal Science in Ancient India. According to Dr. Sen, the Hindu Penalists (a) apprehended the distinction between civil wrong and crime, (b) the predominant feature of a crime is quality of causing alarm to the people, (c) the central idea in criminal law was that punishment for wrong-doing was to be meted out by the king for the preservation of social order. The Indian system of punishment took into account not only the objective circumstances of the offence but also the subjective limitation of the offenders. The ancient Indian criminal law prescribed two kinds of punishment—secular and spiritual. The crime was more serious when it was committed by a man who knew that the act was prohibited. Civil law was more developed than the criminal one. According to Smriti the following causes of disputes were well-known :—debt, deposit, sales without adequate titles, fixing of boundaries, partitions, non-payment of wages, breach of contract, partnership, adultery, violence, slander, robbery and theft, etc.

In the laws about the settlement of the boundary disputes, principally the case of boundary disputes between two neighbouring villages was taken into consideration. In these cases, boundary marks had to be searched and evidence of ancient and respectable inhabitants was required as decisive. Witnesses were also produced for the same. If the border people were bribed and unintentionally gave false evidence, distant neighbours were heard. As a last resort the king settled the boundary. Certain great crimes in ancient India may be stated as

follows, on the authority of Vishnu, (1) Mahapatak—the murderer of a Brahmin, indulging in spirituous liquors, theft of gold belonging to Brāhmana, sexual intercourse with the wife of a teacher, and association with those who have committed crimes, (2) Anupātak—equal to the murder of a Brāhmana, and (3) Uppātak—(lesser crimes) e. g. hypocritical braggary, denunciation before the king, false accusation against a teacher, abandoning the parents, son and wife indulging in forbidden food or drink etc.—(4) Crime which degraded a perpetration to a mixed cast.

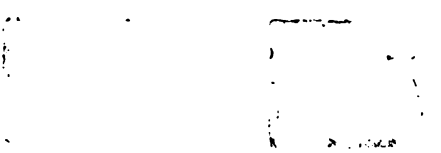
We find a reference to an act of stealing cattle in Rikveda. If the thieves cannot be caught, the king was personally liable to make good the loss, the king, however, may charge the loss from the officers and the guards of thieves in whose jurisdiction the robbery took place. Theft appears to be a typical crime. Like a thief is to be punished he who binds freely the roaming cattle, or sets free cattle that, are bound he who drives cattle to other peoples' field, he who uses other people's property without obtaining permission for it, he who misappropriates a treasure-trove, he who kills a man through carelessness etc. Various sorts of crime have been put in the category of theft, e. g. cheats of every kind, falsifiers of weights, measures and coins, soothsayers, people living on bribe or extortion, quacks, jugglers, treacherous arbitrators, false witnesses etc. According to Narada, they are considered as "word thieves." According to Manu, unjust judges, gamblers etc. are open thieves or robbers. The commonest crime was robbery. Such criminals were punished by being tied to stakes with cords. In all cases of serious crime, the accused was put to death. The same punishment was ordained also in case of burglary, pick-pockets, robbery, stealing cows, horses or elephants, of precious metals or jwellery. Forging of royal grant was punished by death. Law suit was divided into civil and criminal case. The administration of justice in the vedic period was elaborate and we find the mention of Madhyamasi, a man of influence to whom the disputed parties voluntarily submitted their case

for settlement. The procedure of trial differed in various periods. In the Chandogya Upanishad, the ordeal of red-hot axe was applied in the accusation of theft. Spies were employed to ascertain the validity of statements of parties and witnesses in civil and criminal cases. Criminal justice was administered by experts.

On the authority of Megasthenes's account, we can ascertain the general honesty of the people and the efficient administration of criminal law. Penal law was severe and when the crime occurred it was repressed with severity. The crime of giving false evidence was punished by mutilation. Evasion of the Municipal tithe on goods sold and intrusion on the royal procession were capitally punishable. In some cases, the offender's hair was shaved and this was regarded as the most infamous punishment. For petty theft of articles, the punishments prescribed were (a) a fine of 6 panas, (b) shaving the head, and (c) exile. According to Curtius, injury to sacred tree was capitally punishable. The strength of the authority lay in the fact that the central government exercised strict control and maintained close supervision over all classes and castes. Both Strabo and Kautilya admit the existence of an efficient spy system. According to Fahien, the administration of criminal was mild and most crimes were punished only by fines, which varied according to the gravity of offence and capital punishment was practically unknown. About the police administration, we find a reference in Kalidas's Shakuntalam. When the fisherman unwittingly took the signet ring into the country and offered it for sale, he was arrested by two spies. Those two spies are addressed as syala (guardsman of the low caste) and suchaka (Spy). Judicial torture was not practised. According to Hiuentsang, violent crime in the 7th century was rare but the roads were less safe. Imprisonment was now ordinary penalty. Minor offences were punished by fines.

In south India, criminal justice was administered through a committee of justice. Offences were decided by the courts and

the king awarded punishment. During the time of the Cholas, justice was largely a matter of local concern and village assembly was responsible for the punishment of local offences.



(7) POLICE AND JAIL SYSTEM*

The absence of strong central power in ancient India till the rise of the Mauryas did not mean that there was no judicial authority. The local administrative unit was being governed by the popularly elected chiefs. In the pre-Mauryan period, the highest type of democratic system, then known to the world, was prevalent in India and the collective responsibility of the people was so great that there was no necessity of having a separate police force for the maintenance of peace. Every citizen was entrusted with the task of defending the state and the latter, in return, protected the people. The state was based on reciprocal love between the ruler and the ruled.

Police system in India is as old as the Vedas. We find a reference to the police official in the Jibagrah of the Rkveda, and the Ugras of the Upnisads. According to the authors of the Vedic Index, Ugra of Brhadaranyaka upnisad seems to have a technical force denoting man in authority, but Max-muller identified Ugra with Policemen.

The Mauryan king was a benevolent despot and his aim was to promote the welfare of human beings. He left no stone unturned to organise the state on sound basis and the efficient organisation of his army enabled him "to overrun and subdue all India" (Plutarch) Cohesion was maintained between the Central and the local units. The Municipal Commissioners in their collective capacity were to control all the affairs of the city, to keep order in the market and all public works. They can be compared with the modern Police Commissioners. The central government through the local officers maintained close supervision over all classes of people. The government depended upon a highly organised system of espionage. Kautilya insists that the working of the governmental machinery depends mainly on the successful utilisation of secret information, which was controlled by "Five Institutes of Espionage". This system

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was a part and parcel of the vast net work of the police system. Kautilya says that a commissioner with his retinue of Gopas and Sthamikas should take steps to find out external thieves and the officer in charge of a city should try to detect internal thieves inside fortified towns. Gramswami, Viveetādhyaksas and the Chorarajjakas were to investigate and be responsible for theft in the villages and on the roads. The people were also taken into confidence. The sense of responsibility was aroused among the masses where interests were safeguarded by the joint action of the Police and the people. According to Smriti-Chandrika an agreement was reached in the event of a theft scare that each household should send one armed man.

The Smriti imposed an obligation on the ruler to compensate the victim. According to Apastamba, honest and truthfulmen of three castes were to be appointed by the state for the protection of the people. Manu entrusted village headmen with this task. Yajnavalkya refer to the thieves being caught by the Grahakas, explained as Rajpurusha by Mitaksara.

According to Agnipurana, the king is allowed to deduct the amount from the salaries of the police officers if they failed to discharge their duties. We have already mentioned before a reference about the Police System in Kalidasa's Shakuntalam The system was based on the goodwill and cooperation of the people. With an organised police, the nation was secure and safe. Fahien was struck to see such a wonderful organisation and he had never the occasion to complain of being stripped by brigands, a misfortune which befell Hiuentsang, who has also described the efficient working of the police system. As soon as the administration became a concern of the few, the police system was deprived of its former vitality and vigour.

The predominating influence of theology on the conception of law has already been dealt with before. It was believed that every crime was punished by God and those who committed sin were damned to hell. Hence the ancient legal experts compared Karagar (prison house) with hell. References about Karagar are found in the Vedas, the Upnisads and the Purana.

though the details about the jail administration are still lacking. Krishna was born in a jail. Jarasandha imprisoned 86 kings in a temple. Jail was not only a place of torture, but also a training-ground for criminals so that they may serve the society in right manners. During the time of Kautilya, jail administration was efficiently organised. According to Kautilya, there were two types of jails, viz. (a) Bandhangar and (b) charak. The Jail Superintendent was known as Bandhangaradhyaksa. The prisoners were provided with food and clothing and other amenities of life. If a jailor was found guilty of vexing the prisoner or of accepting bribes or doing injustice to the prisoners, he was penalised. It was the duty of the jailor to see that not a single criminal was to go out of jail. Inside the jail, they were given the opportunities to build their character in such a way as to help the society.

Kripatrik has rightly observed that "if the society that corrupts and deteriorates the mind and turns the human being into a criminal perplexity resulting in criminal acts and it is not in any way a born complex in man". The Indian political philosopher was of opinion that committing a certain crime was not an instinct but circumstantial. Law was very sympathetic in its understanding of the criminal. Arrangement was made by the government to do away with the criminality in man.

(8) VALIDITY OF LOCAL COURTS IN ANCIENT INDIA

The Vedic society was sufficiently settled to admit of elaborate differentiation of functions and occupations among the people and already presented an economic environment favourable to the growth of representative institutions in the community. About the judicial importance of the Vedic Assemblies I have already dealt somewhere else. In ancient India, central government was raised on the bedrock of local institutions. Local administration was carried by dividing the local area into political divisions. This facilitated the smooth working of the administration of the state as a whole. Mr. Anderson has rightly remarked, "These villages and townships contain in miniature all the materials of a state within themselves." The village was the lowest unit of administration and it carried on the judicial and governmental business through the village headman. The gradual crystallisation of the large part of society into village communities led to the growth of local particularism. Each village formed a unit in the eyes of law and the theory of joint and collective responsibility grew up. The village headman regulated the local police and taxation and acted as village judge. According to Sabhaparva of Mahabharat there were five village officials, viz. headman, tax-collector, the arbitrator, the recorder and the witnesses. According to Shantiparva there were higher officers each superintending the headman of the villages and still higher functionaries controlling the groups of 100 and 1000 respectively.

The main function of the local bodies in Ancient India was the administration of justice. The law was the true governor and maintained order among the people. The general conception was that law when rightly administered made all happy. The task of administering justice in every locality was entrusted to local bodies. Common law and customs were highly respec-

ted and the decisions of the local courts were respected by the ruling authorities at the centre. Even during the hayday of centralised empires, the importance of local court was not ignored. The element of law consisted in the complex arrangement which made people keep to their obligations. That is why the personal liberty as a standard was expressed in the general rule that none should assail even under the difficult circumstances. The local bodies were the synthesis of three important elements such as the rastra or the estate, mukti or the individual freedom and the various local groups connecting the first two in accordance with the principles of Dharma.

According to Bṛhspati, local courts were of four kinds, e. g. (a) Stationary court—met in a village or a town, (b) not stationary or moveable (c) furnished with king's signet ring, supervised by the chief judge and (d) directed by the king, held in king's presence. The most important local courts were Kula, Sreni, Gana, and Puga. The Kula court was presided over by aristocrats or Kulikas. Kautilya mentions Kula as a council of regency or of oligarchy. We find the existence of such courts among the Vrijjis. According to Brhspati quoted in Viramitrodaya the appeal from Kula court went to the Gana court. The Kula court took notice of the criminal cases and the justice was administered in the name of the President. With the rise of monarchy and the subservience of republican states to the monarchical kingdoms, the Gana court decisions were made subject to the appellate jurisdiction of the monarch. According to Mitaksara, the Sreni court consisted of traders and merchants having the same means of livelihood. The Gana court had their own laws and the Hindu law authorities recognise their separate existence. The Gana laws were called "Samaya". According to Shantiparva, the Gana was the whole body politic or the entire community consisting of Gana-mukhyas and Pradhanas and they carried on the business of the community. The Puga Court consisted of different castes and occupations of one village. The Puga court was possessed of some political character is shown by the Vinaypittaka. Besides

these, Nigama was confined to a town and was a citizens' democracy. Janapada extended over a province from the administrative point of view.

The various guilds are said to have had the powers of arbitration in case there was a dispute. Cultivators, traders, herdsmen, moneylenders and artisans had the authority to lay down rules for their respective classes. The guild-tribunals had sufficient authority and they constituted regular courts under the guidance of a president with three or five co-adjutors but their authority was limited to civil law. The Paura and Janapada laws were enforced by the courts against the offending members and at the same time regulated the conduct of corporate social and economic life. Kautilya does not attach importance to the popular tribunals but he also approved of the scheme of king's court appointed in Sangrahana (a group of ten villages), the Dronamukha (400 villages) and the sthaniya (800 villages). Local disputes were disposed of in local courts and by officials of various grades and there was the system of appeal as far as king. One remarkable feature of ancient Indian Judiciary was that it never came under the controlling despotism of anyone. Miraglia has rightly observed, "Among the Aryan peoples there has never arisen that all controlling despotism which blots out man, as in Egypt, Babylon, China, among the Musalman and Tartar tribes—or if it has appeared, it has not been of long duration".

The law court in ancient India is compared to a human body in which the king is the head, the chief Judge is mouth, the assessors are the arms etc. The functions of the law court are ten in numbers and are thus defined :—The Chief Judge passes the judgement, the king inflicts the punishment, the assessor investigates the merit of the case, the law books furnish the desire, gold and fire are used when ordeals are resorted to, the water is to refresh, the accountant calculates the value of the disputed property, the scribe records the proceedings and the Court servants have to summon the accused, the assessors and witnesses and to hold both the parties in custody if they

have given no security. The respect for common law and personal liberty enhanced the responsibilities of judicial bodies. The importance of public opinion is seen in the fact that the king's minister took into consideration the public view with regard to the current laws. The dominating position of law was never called into question by the local bodies. According to Vyasa the competence of Local court was restricted merely to administering reproofs, for the infliction of punishments involving the confiscation of property and the corporal punishment was a privilege reserved for the king.

Rikveda recognises the authority of local customs and laws. According to Sukranitisar only best men of the locality were to act as judges. Manu also accepts this view. The local courts took cognisance of both civil and criminal cases. Brihspati is of opinion that the local bodies should consist of a board from two to five persons. According to Yajnavalkya the governors should be well-versed in religion and free from avarice. The real importance lay in the fact that the king respected their authority and the judgements of the local courts were highly valued. According to Bṛhspati, the decision of local bodies should be approved by the king as well because they are the appointed managers of the affairs. The coercive power of the local court cannot be really ascertained but it can be easily pointed out that the power of the state was behind these courts. There was a kind of mutual relationship between these courts but they were subordinate to king's court and thus recognised the principle that the king was the fountain head of justice. The validity of the decision of local court was also recognised. Manu is of opinion that the king should respect the opinion of the Jati, Sreni and Kula. According to him a king who knows the sacred law should enquire into the laws of Jati (caste), Janapada (districts), guild-laws and family-laws. Gautama enjoins the king to administer justice in accordance with the customs, desa, jati and kula. King's legal decision should be given in accordance with that which is declared to be established law in each community by its

spokesman. The king was to respect the laws of the local bodies and could not enforce his own law without reference to these local laws. The authority of law is sanctioned by Apastampa and Baudhāyana. Vasistha reiterates Manu's opinion and is of opinion that the king should respect the laws, courtiers, castes and families. Mahabharat also recognises the sanctity of local laws. Kautilya is of opinion that the laws and customs of castes, families and guilds should be entered into the state-law books. According to Bṛhspati, the civil law was the outcome of achara accepted by the community. King should also see that the state laws are respected.

(9) JUDICIAL IMPORTANCE OF THE REPRESENTATIVE INSTITUTIONS

The Vedic politics was definitely democratic in character. The village organisation was more or less a natural development and not a creation of the central government. The villagers had a judicial system of their own, at once familiar to and respected by them and the various traders and guilds had a similar system.

Gram :—The lowest unit was village and its Chief was Grāmni who represented the people before the ruler and the ruler before the people. There is nothing certain about his appointment but it is believed that he was elected. He was the keystone of the village constitution. The principle of representation was highly appreciated in the vedic period and from a reference in Atharva-Veda (XII. 1. 56.) we can infer that the village units also sent their representatives in the Samiti. Local disputes in village were disposed of by the villagers themselves but in matters of national importance the village reflected the decision of the Samiti in actual practice and coordination seems perfect. There stood beside the king, as the mode of expression of the will of the people, the assembly which is devoted by the terms Samiti and Sabhā and the tacit consent of the people played an important part in the administration of justice. The Vedic people were conscious of the intrinsic importance of the common assembly and the efficiency of their corporate political authority was based on unity and agreement. Zimmer admits that activity and cooperation of the people were carried on in meetings. The society in Vedic India was characterised by a keen sense of public life and animated political activity.

Sabhā and Samiti:—Two important representative institutions are visible in the Vedic period, namely Samiti and Sabha. Different interpretations have been given in connection with these assemblies but one thing is clear that these were also the

judicial bodies. According to Macdonell and Keith the business of the Samiti was general policy of all kinds and also judicial work. In their opinion Sabha was a kind of village council. Sabhā frequently met to administer justice and the term Sabhasad meant assessors or legal experts who decided legal cases in the assembly. The frequent use of Sabhachar signifies Sabha as a law-court and it is clear that Sabhachar was there to decide the cases. The Sabha was the local assembly and the Samiti was a national assembly and the national judicature. The relation between the king and the people was determined in the Sabha and this is clear from a passage in Rkveda where we find, "Like a great king who goes to great assemblies." The importance of Sabhā as the most important judicial institution came to be recognised in the Dharmasāstras. Hillebrandt is of opinion that Sabhā and Samiti were identical, but on the authority of the Atharva-veda his conclusion does not hold good. In Atharva-veda, Sabha and Samiti have been described as two different bodies. They are described as two daughters of Prajapati. Sabha was not merely a village or local assembly but a central aristocratic gathering associated with the king and in the Atharva-veda we are told that there princes came together to make the assembly complete. Sabha was also a political body and the king was intimately connected with the political Sabha. Prajapati is spoken of having a Sabha. On the authority of Atharva-veda, we can describe Samiti in the following manner—

(a) Samiti was a gathering of the whole folk of the community.

(b) It was the assembly of the Rastra—

(c) It met on the all important occasions, say, in Coronation or in National Assembly.

From the constitutional point of view, Samiti was a sovereign body and matters of the state were also discussed in the Samiti. It was a legislative body and it coordinated the work of the nation. Sabha maintained its judicial character even in later period. The Jataka describes that Sabhā which has no good

people is no Sabha, that the people who do not speak out the Dharma (justice) are not good people, that those who avoid personal sentiments and speak out justice are called the good people. The two assemblies, Sabha and Samiti, were personified as positive powers in the life of the community. Where laws are operative, respect and goodwill of the people are essentially indispensable. It is here in these two assemblies that we find the western conception of ethico-politics inherent in them i e. "It is the objective mind which is subjective and self-conscious in the citizens; it feels and knows itself in the heart of each" (Bradley "Ethical Studies". P. 184). The Vedic National Assembly was cooperative in its nature and was regarded as "Footsteps of god in the world". Hillebrandt sanctifies the assembly as an institution by religious ceremonies.

The Council :—Association of learned men was called Parisad. It existed in the later vedic periods. Parisad was apparently originally of a pastoral character and is said to have been made by Angiras as for men. It was converted into administrative institution (council of judges and Ministers). Besides, it being administrative unit, it was a gathering of specialists in law, acharyas, theologists etc. It signifies the assembly of advisers on the question of philosophy. According to Messrs-Law and Sarkar, the ancient tribal assembly was the background out of which the council developed for executive purposes. According to ancient Indian law books, its function was mainly judicial. Dr. Jayswal calls it a national academy. In the Buddhist literature it is called Parisā. Kautilya calls it the Council of Ministers. It will not be out of place to call it national assembly. In that sense its judicial importance can in no way be ignored. It controlled the whole judicial machinery and it also pronounced judgement. It also discussed the matter of national importance. Kautilya is of opinion that all matters of state should be discussed by the Parisad and the majority decision should be carried out by the king. Manu regards those rulers worthless who carry on the administration themselves and, without the consent of the Parisad. According to Katyāyana

king should not decide a law suit by himself but should do it along with the council. The idea that the council was a judicial body is clear when we see that the Lichchavis of Vaisali had a council of Final Appeal also known as "Astha Kulaka". In the Vaisali republican system everybody enjoyed the right of freedom of speech and voting and hence its representative character cannot be called in question. The King can not govern the state for a day without ministers. The council was the pivot of the national life. It was some sort of a check on the royal power and it required the king to compensate justice, where injustice had been done, and to administer justice in conformity with the law of the land. Fair justice to all was the watchword in ancient India and being imbued with such spirit, the ancient sage declared, "The royalty of the king and the prosperity of the world . . . . . are born out of the goodwill of the people. Pleasing the people and welfare from the love of the people are the two means to sovereignty." (Agnipurana).

Pauras :—It was one of the units of administration and in modern terminology it may be identified with the township. Kulika was a judge of the Paura and Prathama Kulika was generally regarded as the first judge of the Paura court. It maintained the tradition of the local laws and customs and it had its effect on the national law as well. Paura law was nothing but the resolution passed in its meetings. Therefore this law was called "Samaya" or law agreed upon in the assembly. The resolution had the force of law and the local law courts enforced them against the offender. The main aim of the Paura was to regulate the conduct of the corporate society through judicial means. The Paura also enacted the fixed laws (sthiti) or the country-law (Desa-Sthiti). These were generally recorded on the rolls and there was no interference from the central government in these local matters rather the local laws influenced the central authority in moulding its law in that light.

Thus a brief survey of these five representative institutions shows that they played an important part in moulding the administration of justice.

In every civilised state the function of government can not be performed without incurring considerable expenditure. Tax is a necessity of the state. We find the existence of this principle in the Vedic period. The state is maintained by finance. According to Kautilya finance is the basis of all activity of the state. In the early period of society taxation was a sort of voluntary subscription towards the state, but with the growth of administration machinery, it was transformed into compulsory contribution. Taxation always changes its character with the nature of the constitution.

The period of Manu was a period of stabilised administration. He lays down the positive injunctions that tax must be levied according to the Shāstra or Law—"the king should take tax every year in accordance with Shāstra". But the king had not the sole prerogative to impose taxes. He must consult the representatives of the people and "he in conjunction with the assembly, after full consideration, so levy taxes in his dominions that they may conduce to the happiness of both the rulers and the ruled." The general accepted principle was that taxes should be levied after a consideration of the income and expenditure of the people. Gautama asserts that a subject is bound to pay revenue to his king and he supplements his statements by saying, "In as much as the king ensures the safe possession of all these things (of cultivators and traders). Gautama's dictum is supported by Manu in his saying," tax should be levied (by the king) having protected the people with weapons." But Manu gives a note of caution also, "One's own root should not be destroyed by giving up taxes and duties nor that of other's (subject's) by excessive taxation." The king should imperceptibly realise tax from the people without harming them in the least. To promote the happiness of the subject is the highest duty of the king. Manu advocated the

theory of paternal despotism. Revenue must be collected through honourable and accomplished men possessed of high and excellent character. While discharging the duties of the state, the king, the president of the assembly, his ministers and officials must observe the eternal principles as taught in the Vedas. "Let them act like fathers to the people." Manu fixes the rate of taxation as follows : Let the king take from the tradespeople and artisan one-fifteenth part of their profit in silver and gold; one-sixth, one-eighth or one-twelfth of agricultural produce such as rice". Cultivators must pay to the king as tax amounting to one-sixth, one-eighth or one-tenth of the produce. The king receives tax as his pay from the subjects and also as the reward for the protection of his subjects. The king must be considerate in his behaviour towards the people. If he takes it in cash instead of kind, then too let him take it in such a way that the people would not suffer from poverty or from want of necessaries of life such as food, drink and so on. Manu was altruistic in his thoughts and feelings.

The court was constituted by the chief Justice i.e. Prādvivaka and other judges, but everything was done in the name of the king. The nature of courts has already been dealt with in earlier chapters. But according to Bhṛgu there were fifteen types of courts. Three courts were of the same type as described by Bṛhṣpati. In the fourth court, the village people discussed their own problema nd its jurisdiction was confined to the village. The fifth court was constituted of the representatives of various organisations. Sixth and seventh court consisted of traders and citizens. In the eight court the village-folk acted as judges, in the ninth the different Kulas acted as judges, in the tenth the citizens acted as judges while the eleventh was the court of the srenis; eleventh, twelfth, thirteenth were presided over by the authority on ethics and moral science and the Kulas. The fourteenth court was constituted and regulated by the king and the fifteenth was the High Court of justice with king as its head. Except the last two all were the democratic courts of justice. According to Smritichandrika their function was simply to decide the cases and determine the punishment. King was expected to direct the people in a right way.

Cases were heard in the open court. Sukra has prescribed the four following procedures in a case: (a) Petition by the complainant, (b) written statement, submitted in defence, by the defender, (c) Defence taken on both sides for the maintenance of their respective cases and (d) Decision by the judges.

The king, on receiving the petition from the complainant, enquired about the nature of the case and the proceedings were written by the scribes. Such questions were put to the complainant by the presiding magistrate and after the complainants, answers were noted down, he had to put his signature. Then that was sealed and the accused was summoned. Certain persons were entrusted with the task of bringing the accused

before the court and he was kept in custody under the warrant of arrest. Such arrests were of four kinds viz. (a) to keep one confined in one particular locality, (b) to arrest one for a particular period, (c) not to allow the accused to go out and (d) not to allow him to do any work. If, on being summoned, the accused did not present himself, a warrant of arrest was issued against him. There a provision for bail also. After the chief examination of the complainant was over, the accused was allowed to put forward his defence, which was also noted down by the scribe. He was allowed to declare either of the following points :—(a) that the allegations against him were false, (b) that the allegations were correct, (c he could say what he liked in his defence and (d) he could cite the former judgements in such cases i. e. pre-judicata. Ordinary cases were tried without delay but in complicated cases the parties were given sufficient times to prove their cases.

In matters of constitutional importance the judges consulted smritis and the old judgements. In such cases, circumstantial evidence was also taken into consideration, while Manu and Sukra supported the hearsay evidence. Witnesses were also heard. According to Sukra there were two types of witnesses i. e. (a) one who had seen the occurrence himself and (b) one who had heard about it and the latter was again of two types : (i) Asatyabaktā and (ii) Satyabaktā. Besides the statements of the witnesses, the judges adopted various means for ascertaining the truth. Water and fire ordeals were also very common. In all cases, where written evidence did not suffice, the judge was authorised to do what he thought just. In cases where both human and divine witnesses (oaths etc.) were produces, the judge has to rely more on the human witness and deliver his judgement on that basis. If any lawyer accepted more than the prescribed fees, he was charged with the crime of professional misconduct. Besides that, cases of local importance were decided in the local courts, about which mention has already been made in earlier chapters.

The effecient village administrative system had engendered a splendid sense of solidarity among the members of the village community. The sense of solidarity, cooperative spirit and ability evoked appreciations from many quarters even in the present time. The various phases of convulsions in Indian history did not affect the effecient working of the system.

The village headman was the keystone of the village constitution. He was the leader of the village army and his first task was to protect the village. He was consulted by the king. The village had to rely much on its own strength as there was no hope of any external or central help in those days. The village had to collect the tax. He happened to be a very important influential personality. His third main task was to try cases, to do things for public benefit and to establish schools in his area. He was better known as Gramin or Grāmika.

The village office also maintained records e.g. records dealing with the sale and purchase of land etc. The proceedings of the village meetings were preserved. All these works were done by the village-scribes or the record-keepers. There was no scope for any high-handedness by the village-headman. He had to abide by the advice of the Grāmbriddhas. The Grāmbriddhas rectified the errors of the village headman. During the Mauryan period, the village administration looked to the matters of general and public interest and also arranged for the variety entertainment of the villagers. The decisions of the village-council were binding upon the members.

The village-Panchayat controlled and managed the fallow lands. The Panchayat decided the village disputes but crimes of grave nature were sent to the higher courts. It also tried the civil cases. King was the source of all justice and the judicial authority was delegated to the Panchayat by the king. It also controlled the management of the temple. It arranged

for the irrigation and drainage and repaired roads. It also awarded stipends for the study of the Vedas. The business of the Panchayat was conducted in the public meeting. From a study of the local government in South India, we learn that the central Panchayat was divided into sub-Panchayats. There were four separate committees of temples, tanks, gold and justice. The Panchayat had the right to sell the lands of such persons who failed to pay the government tax for three years. It was also authorised to levy fines. Fines, when realised, were kept in the village-treasury. The central government did not interfere in the village administration though it was under the general purview of central supervision and control. When ever necessity arose, the central government granted aid to the village. The village accounts were checked by district authorities and they sometimes used to call the village-headman for consultation.

Common service to civil life made the village community a harmonious civic unit. Complete acceptance of their social and economic interdependence created such a harmony possible. According to Metcalfe the village communities were little republics, having nearly everything that they wanted within themselves and almost independent of any foreign relations. Now let us turn our attention to the Municipal administration.

Magadha was the seat of the Mauryan empire. Pataliputra, the largest city in the world in the 4th and 3rd century B.C., had an effecient system of Municipal administration. It was administered like a modern city. The administration was carried on by six boards. The basis was the Panchait principle. The first Board looked to the development of industrial arts. The second Board looked to the well-being of the foreigners. It assigned lodging and kept watch over their modes of life. The foreigners were treated as guests of the nations. The third board kept the census record and statistics. The fourth board superintended trade and commerce. Its main business was to see that the products were sold by public notice. No one was

allowed to deal in more than one commodity, unless he paid double tax. The fifth board supervised manufactured articles. The sixth board collected tithes. Fraud in the payment was punished with death. Each board consisted of five members. The responsibilities of Nagaraka and city council were great. The health restrictions were strictly enforced. Persons were not allowed to commit nuisance on the roads and there was penalty for throwing dust on the road. The paths were fixed for carrying the dead bodies. As protection against fire, people were asked to cook outside the house. The householders were to keep five earthen pitchers for the protection against fire and able-bodied persons were in duty bound to help in such crisis.

Every arrival and departure of guest had to be notified to the city police. The city authority kept special watch on the movements of hermits. In collective capacity the members of the boards had charge both of their special departments and also of matters affecting general interest. The Arthasāstra envisaged a system of city administration which was modelled on the administration of the district. According to Kautilya each city was to be placed in charge of a ward. City administrators were to be responsible to the king or Kumāra. Asoka maintained the traditional system. From separate Rock Edict! we learn that Tosali and Samāpa were two cities, placed in charge of a city magistrate known as Nagara-Mahāmātras. From his Edicts we learn that the city administrators were addressed in their collective capacity. Asoka did not allow them to be high-handed rather he took steps to stop them.

(13) ADMINISTRATIVE SYSTEM OF ASOKA

Asoka rightly understood that the efficient management of the state can be possible only when loyalty and the cooperation of the people are secured. His aim was to unify different organs of government for the realisation of the greatness of Dhamma. As a part of royal prerogative, he claimed certain rights and privileges. He was a benevolent despot. The main privileges, claimed by Asoka, were :—(a) the control of legislation, (b) Issuing of ordinances, (c) Framing of the budget, (d) Deciding the foreign policy, (e) Appointment and dismissal of government servants, (f) Publication of Edicts, (g) maintenance of ports, roads, waterways etc.

He was the head of the administration. The basis of administration was monarchical. The Yuvaraj stood next to him; and other important functionaries were ; (i) Senāni (commander-in-chief) (ii) Purohita (royal chaplain), (ii) Mahisi (chief queen), (iv) Suta (charioteer), (v) Grāmani (citizen), (vi) Kṣhatri (chamberlain) (vii) Samgrahitri (Treasurer) and others. Ministers and other high officials were appointed after a good deal of tests. The strength of character, the purity of sentiments, the feeling of gratitude and firmness of devotion were some of the best traits of a ministers and other high officials. They were expected to be free from wrath, conceit and malignity, cruelty and oppressiveness. They should be of genial temperament. They were to carry out the orders of the king. They advised the king in administrative matters and Arrian describes them as "those who advise the king, or the magistrate of self-governed cities, in the management of public affairs". According to Diodoros, the councillors and Assessors deliberated on the public affairs. The advisers were taken from their ranks. The generals of the army, the arbiters and the chief magistrates belonged to this class. The appointment of the

Amatyas was made upon the advice of the Prime-Minister. All appointments were made after severe tests.

Next to the king was the Mantri parishad. Its business was to advise the king. Ministers were also individually consulted. Ministers, when they met together, formed the Manrti-Parishad. The Parishad may be compared with the modern Cabinet. When only the Mantrins were asked to discuss the administrative affairs, then only the Parishad acted as the modern Cabinet; otherwise it acted in another capacity. In other words they were the political advisers of the king. When mantrins and Karmasachivas were called together for joint deliberation the Parishad acted as the Privy Council where strict secrecy was maintained. We are not in a position to ascertain any real distinction between mantrins and other high-officials such as Karmasachivas. According to R. E. VI Mantri parishad discussed the work entrusted to the Mahāmātras. Prativedakas (Reporters) watched the proceedings of the council. They reported the final decision of the Parishad to the king. There was full freedom of speech in the Parishad. The presence of Prativedakas in Parishad clearly signifies that Asoka absented himself from the meetings of the Parishad and as such did not interfere with its actual working.

Besides that, there were Chief Minister, in charge of general administration, Vohārika-Mahāmātras, in charge of judicial administration, the Senānāyaka-Mahāmātras, incharge of army, Ganaka-Mahāmātra, incharge of accounts, Antepur-Upchārak-Mahāmātra, incharge of the inner apartments of the royal palace and Vinischaya Mahāmātra, a judicial investigator below the rank of Vohārika. There was a clear differentiation of function and there was a separate had for each department. Dhamma-Mahāmātras were a class by themselves chiefly devoted to the inculcation of Dhamma. R. E. 12 tells us that there were also Vrchbhumikas and Stryadhyaksa Mahāmātras. The city administration was under the control of Nagara Mahāmātra. There were other state functionaries know as Rajjukas,

Prādesikas, Yuktas, Lipikaras and Dutas. As yet we have not been able to ascertain the relation between the Yuktas, Rajjukas and the Pradesikas. From R. E. 3, we only learn that 'Purusha', another state functionary, acted as intermediary between the king and the yukta on the one hand and the Rajjukas on the another. Lipikāras were probably the Lekhaka of Arthasāstra and scribe of the ancient literature. The Dutas were king's ambassadors in foreign lands.

The organisation of the Government :—

One of the most important departments was that of Dhamma. The department was carried by Dhamma-Mahāmātras. They advised kings on religious matters. They had the following functions :—

(a) to encourage the true spirit of tolerance (R. E. 12)
(b) to work for the welfare of the virtuous (R. E. 5)
(c) to preach truth and the law of duty (R. E. 5, P. E. 7)
(d) to persuade people to honour all sects (R. E. 12)
(e) to work for the happiness of neighbouring countries and to protect the religious against molestation (R. E. 5. P. E. 7)
(f) to protect one who is bound in chain (Jail) against molestation, to grant him release in extraordinary circumstances. (R. E. 5)

Other officers of the state were in duty bound to support Dhamma-Mahamatras in their activities. They looked to the strict observance of the state-regulations in all matters because that was also regarded as a part of the Law of Piety. For Asoka, humanity was the true religion and whoever worked for the welfare of the humanity had to be helped by the state servants. Therefore the services of the Pradesikas, Rajjukas and Yuktas and Dutas were requisitioned by the department of Dhamma, whenever necessary, and this was not regarded as a part of royal encroachment upon other's power. There existed a reciprocal understanding between all departments of governments as all of them were guided by the same spirit of service to the people.

Other important department was that of Stryadhyaksa-Mahāmātras. They preached Dhamma among the ladies and carried out the orders of the state. They looked to the interests of women in general and tried to keep them away from mischief. The Vrchbhumikas communicated the imperial message to the people. This work could not have been done by one man and as such a separate department was maintained. A separate department of foreign affairs was also maintained. The Duta represented the king's view in a foreign country. The king also received foreign envoys in the presence of the Council of Ministers. It was through the Dutas that Asoka propagated the Law of Piety in foreign countries. From S. R. E. 2, we learn that the Dutas were entrusted with a definite mission. Besides, there was the Public Works Department which looked to the planting of shade-trees, sinking of wells, excavation of tanks, making of cave-dwellings, erection of alm-houses and hospitals for men and animals etc. This department was organised on efficient lines. In foreign countries, this was done by the Dutas.

Asoka issued orders from time to time known as Sāsanas. Written order was called Lipi. Such orders were generally inscribed on pillars so that the public may know the wishes of the king. The Rajjukas and Purushas also carried out the orders and made them known to the public through their own agencies. Separate spies known as 'Purushas' in Asokan Inscription were employed to "watch all that goes and make reports separately to the king."

Now let us turn our attention to the judicial administration. From Pillar Edict 4, we learn that criminal offences involved arrest, imprisonment and death sentence as punishments. In a death sentence three days' respite was granted. The Rajjukas reviewed the judgement. The king delegated this right (of hearing appeals) to the Rajjukas and this shows that even in the those days the theory of delegated authority was in vogue. In P. E. 4 he says that he delegated his full

royal authority to the Rajjuka and made them supreme heads of local administration. Rajjukas were like expert nurse to whose care the Emperor entrusted the well-being of all his children i.e. the subject. In matters relating to the administration of justice, they were completely free from outside interference. Asoka rightly understood that any interference would lead to the maladministration of justice. Those who are made the custodians of the people should be free from all sorts of external interference and above wants. Through Purushas, he communicated his own view to the Rajjukas. He gave the Appellate power, which was till then the prerogative of the king, to the Rajjukas and as such they became the head of the criminal justice. Divyadāna maintains that Asoka abolished capital punishment altogether but this has not been corroborated by the Edicts.

The prisoners were supplied with the amenities of life. They were protected against molestation. They were paid allowances to support their family members. Once in a year he effected Jail delivery. The prisoners were entitled to reconsideration by reason of their good conduct or age.

Officials :—Dr. Mookerjee defines yukta as a government employee on the authority of the Arthasāstra. But we find a different version of the same in Asokan Inscriptions. They were officers connected with administrative secretariat. The Rajjukas were important authorities and the Inscriptions describe them as officers over "many hundred thousands of populace". Rajjukas, besides being the judicial head, also controlled the collection of the revenue and put forward schemes for its best utility. The Prādesikas were subordinate to Rajjukas in their official capacity and they collected the taxes. They also tried criminal cases and controlled subordinate officers. The king was accessible to all. According to R. E. 3, the Yuktas, Rajjukas and the Prādesikas were responsible for the efficient administration of the state.

(14) PUBLIC OPINION IN ANCIENT INDIA

A study of ancient Indian polity leads us to believe that public opinion played an important part in ancient Indian constitution. It limited the arbitrariness of the monarch. Whenever the state touched the total area of society, it had to take into consideration the public views. Public servants were greatly influenced by public opinion. In the Vedic period, social criticism at the public gatherings or religious ceremonies was the lowest form of public opinion. In the early stages of the Vedic society, it was the social pressure and criticism that counted much, because till then the political concept had not developed so much as to enable the people to form a public opinion in the sense it is applied today. Rkveda gives ample illustrations about such social criticisms. People pray to Agni to save them from dishonour. It is said that the people presents gifts because they dread dishonour. People had to be cautious in their behaviour and the public officials were not above reproach. Brhspati emphasises the importance of public opinion as an important factor in the political life of a nation. According to him the king should not practise such things which are not approved by the common people. According to Mahabharat the failure of a king was inevitable if there was popular opposition. During the epic period, the principle of public approval was thoroughly approved and even the coronation of the crown prince was subject to the approval of the people. The sound constitutional principle found favour with the later monarchs. When a resolution was passed, it was referred to the public for approval. All resolutions were to be carried into action by the king only when it was approved by the general public.

Kautilya took public opinion as the main factor in a political system. He says, "It is unrighteous to do an act which excites popular fury, nor is it an accepted rule". Kamandaka

and Sukra valued public opinion and Sukra in tune with Bṛhspati held that on prudential grounds even moral principles should be suspended before public opinion. Sukra says, "An action which is religious but disapproved by the people does not lead to heaven." Kamandaka addresses the people as venerable and he is of opinion that anything done without the popular consent is unjust. He therefore advises the king to win the good wishes of the people. King should not excite popular fury. Both Kautilya and Kamandaka realised the importance of public displeasure against the king. Kamandaka is of opinion that public opinion should be taken into consideration with due regard. The king should employ spies and other agents to know the strength of the public opinion in all matters and we see that Asoka had engaged spies for that purpose. The knowledge of public opinion was necessary for the maintenance of the efficient state-system and it helped the greater organisation of the society as a whole. Kamandaka declared that royal prosperity depended upon the goodwill of the multitude. In this connection Sukra asserts that public opinion should not be ignored. Public opinion should also be taken into consideration when any appointment to the public office was made. The officers should be such as to enjoy the confidence of the people. Sukra advises the king to dismiss such officers as are accused by one hundred persons. Here the king is advised not to take the side of his officer but of the people. Any partiality on the part of the king was sure to bring him down in the eyes of the people. Kamandaka holds the same view with regard to the appointment of public servants and is of opinion that if any officer incurred the displeasure of the people or violated the public opinion he should not be allowed to continue in the state otherwise he should be an object of criticism by the people and thus bring dishonour to the state. It was the duty of the wise monarch to pacify the disaffected people. The public opinion had certain constructive value. Jayaswal observes—"The royal solicitude to find out

public opinion on the royal conduct and administration went to limit the arbitrariness of Hindu monarch."

The early Aryan thought, though predominantly religious, did not try to avoid public opinion but on the other hand it encouraged its use in all aspects of polity. The reason of such encouragement was that they had emerged out of the period, which was mainly tribal and communistic and as such they has not forgotten the collective mode of doing everything. It is only for this reason that we find the prevalence of strong public opinion in the early Aryan thought. The security of the state depended upon the goodwill of the people. The good of the community was the ultimate end of the state. Election or deposition of the king was the prerogative of the people. Public opinion manifested in four ways :—(a) Election of the king, (b) Rejection after election, (c) Deposition and (d) Restoration of a deposed king. We find a reference to this in Atharva-Veda. Dr. Mazumdar observes, "There can be no doubt that they took politics seriously and that society in Vedic India was characterised by a keen sense of public life and animated political activity." Atharva-Veda emphasises the diverse aspects of unity for political and social purposes as follows—"Like-heartedness, like-mindedness, non-hostility, do I make for you, do ye show affection, the one toward the other, as the inviolable cow toward her calf when born . . . . . Having superiors dutiful, be ye not divided, accomplishing together, moving on with joint labour, come hither speaking what is agreeable to one another . . ." The reciprocal understanding of the common aim and object was the basis of the Assembly's strength. The goodwill of the people and respect of public opinion were indispensable factors in making the laws operative.

With the rise of Buddhism, values of life and thought also changed. But even at this stage, the government derived strength from the popular consent and existed for the fulfilment of certain needs. According to Buddhist concept, the tax was

the remuneration of the king for the administration of justice. According to Dr. Ghosal, it was a weapon which might be used to justify almost any degree of popular control over the king and in particular to contract the contemporary doctrines of respect and obedience of the people. The admission of the Kautilyan king as "the first servant of the state" and of the king of Taxila as being not the "Lord" leads us to believe that importance of public opinion had not receded even after the rise of Buddhism and Kautilyan conception of Monarchy, Buddhism defined kingship as a service to the people. The epic period, characterised by the standard of equality and liberty, saw the crystallisation of public opinion. According to Mahabharat, all men have similar bodies, are possessed of all qualities, have equal claim to every object and have equal power with the king. Public opinion also moulded the policy of taxation in Ancient India.

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