



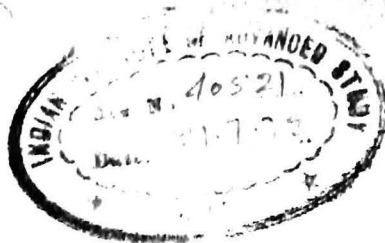
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SOCIO-LEGAL IMPORTANCE OF PRĀYAŚCITTA

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Expiation or *Prāyaścitta* is an institution, the importance whereof can hardly be exaggerated. The reasons are not far to seek. In the earliest society, when the State was not sufficiently organised and when the judicial administration, in the modern sense of the expression, was not adequately functioning, it was mainly expiation, a socio-religious instrument, that was actually controlling the society. Necessarily, expiation had a religious bias and it succeeded in controlling the society with its appeal to religious scruples. Sometimes, no doubt, especially at a later stage, there was a sort of overlapping of these socio-religious punishments in the form of expiation and legal punishments through the judicial organ. "There was", says an eminent Indian jurist,¹ "religion with its code of sins and punishments after death to be compounded for by penances and expiations in this world. The religious organisation of the society was more ancient than the State, and its sanctions were, in those days, much more effective than mere human sanctions. Everywhere in primitive and ancient times, we find penances imposed by religious law for offences long before crimes began to be punished by the State. The punishments imposed by religion were sometimes very drastic. Death, maiming disfigurement and a wild variety of physical chastisements were included in the schedule of penances. On the other hand, there were also drastic social sanctions extending from more or less harmless privations to the utter exclusion of a member from society as in case of *Homo Sacer* or *Aerarius* of Rome or the *Abhiṣasta* of India. So that before the State undertook to punish offences, the idea of offence and punishment had already become familiar to the people in the religious law.

"There is a remarkable circumstance to be noticed in the scheme of sins and their appropriate penances. Penances are provided as less drastic substitutes of punishment in after-life. We, therefore, find lurid pictures of the punishments people suffer after death for sins committed during life. Maine has drawn attention to the fact that these punish-

1. N. C. Sengupta, *Evolution of Law*, pp. 77-78.
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ments in hell are conceived very largely on the principle of retaliation, the infliction on the wrongdoer of approximately the same injury that he has inflicted on his victim. The penances prescribed for the sins also partake of the same character more or less. Penances for injuries caused to others very often take the shape of the voluntary infliction of the identical injury on the wrongdoer himself. In the developed Indian law of penance, there is moreover the idea of purification of the mind by self-mortification, worship or contemplation most notably associated with sins not affecting others. It is in this religious code of sin and penances which existed side by side with the reparatory code of civil law in primitive society that we have to seek the roots of a law of Crimes."

The institution of expiation is not exclusively an Indian one ; nor is it connected exclusively with Hindu religion. But in the ancient Indian scriptural literature, the eminence of the institution has been elaborately brought forth. The importance of expiation can be well understood when it is seen that Yājñavalkya has devoted one of the three chapters of his *Smṛti* to *Prāyaścitta*. Manu also has devoted practically the last two chapters of his work to the treatment of expiation. Other writers of *Dharmasūtras* and *Dharmaśāstras* also have dealt with this topic in a more or less traditional way. One thing that strikes even a casual reader of the *Dharmasūtras* and the *Dharmaśāstras* is that the nucleus of the general theory of expiation is to be found more or less in the same traditional form in all the textbooks. Some quotations have been cited by several authors, none of them knowing or disclosing the real source. The society accepted many doctrines and principles without knowing or caring to know their real source or authorship.

Expiation typifies the most important aspect of the Brahmanical society based on caste and *Āśrama*. Hence it is no wonder that the Brahmins used expiation as an effective means for not only controlling the society in which they had the highest position but also, according to some at least, for securing material gains.

Expiation is a correlative of sin. Sin again was originally conceived as a transgression against the laws of Varuṇa (*ṛta*). The Vedic deity Varuṇa has been depicted as responsible for maintaining the moral order of the Universe. Therefore, any sin committed was to be expiated for the propitiation of Varuṇa, who, when pleased, could absolve the sinner from the consequences of his sinful acts. This might be regarded as the genesis of the conception of expiation. Repentance, atonement, determination not to repeat a sin, are the usual features that are involved even in the modern conception of expiation. References to expiation are to be

found in the Śrutis and they are much more elaborated in the Dharmasūtras and the Dharmasāstras. The real causes behind these elaborations must be sought for in the simple fact that the society was growing and expanding with the passage of time.

It will be interesting to examine the different speculations of the authors of the Dharmasūtras as contrasted with the authors of the Dharmasāstras. That will give also a sort of historical perspective regarding the very growth and evolution of the institution of *Prāyaścitta*. The contribution of the commentators also are found to be considerable and their significance will be immense especially from the standpoint of the actual working of expiation in the society during the different periods. It is in this sense that some ideas of the state of the society also can be had from the study of expiation, since fundamentally it was a socio-religious institution. Expiation is naturally connected also with the forms of legal punishment, because, originally, the two forms were not so easily distinguishable. Now-a-days, of course, there are offences which are visited with legal punishments, inflicted by the State through its judicial organisation in which no question of socio-religious significance arises any longer. Thus if a Brahman today commits murder he will be punishable according to the provisions of the Indian Penal Code without any consideration whatsoever of his caste. Again if for any social offence, a man's washerman, barber and priest are asked not to work for him, no action can be taken by the present law courts unless that offence is recognised by law. Thus it has been provided by the *Civil Procedure Code* that in order to attract the applicability of the code the dispute must be of a civil nature or recognisable by the civil courts.

It will be seen that though originally expiation virtually served the purpose of social-cum-religious-cum-legal punishment, still in its later stages it was relegated to the position simply of a socio-religious chastisement stripped of its legal association. Briefly speaking, the modern difference between expiation and legal punishment may best be described by saying that the former is connected with moral or religious transgression whereas the latter is an offence against the State or the law recognised by the State. But the moral element is still found indirectly to attract the consideration of the court in what may be described as aggravating or extenuating circumstances. Even today the courts of justice inflict punishment on offenders more or less considering the facts and circumstances of each case. So indirectly, the moral or religious considerations are still not absolutely dissociated with the modern

conception of judicial punishment. In some cases, again, moral and religious considerations have been clearly provided for.

It hardly requires any reflection to see that modern Hindu Law, as it is actually working today, in the society, is derivable ultimately from the original textbooks and their commentaries, of course, subject to certain amendments warranted by the changes in the society due to diverse politico-sociological considerations and exigencies. The same thing can be maintained about the conception of expiation also. Expiation has not become absolutely obsolete today. It is rather conspicuous that in expiation, the amendments are even fewer and the modern expiation is almost a reproduction of the original forms in cases where it survives at all. The reasons are quite clear. The topics of law having been subject to examination by the courts naturally underwent many drastic changes; but this was not the case with expiation which was always left to the society.

Many interesting and significant theories and doctrines were propounded by some of the earlier writers of the *Dharmasūtras*. The later writers including even Manu and Yājñavalkya were more or less empirical in their treatment relying more upon specific cases of sins and their expiation rather than on any general theory. Thus Gautama, the earliest of the *Sūtra* writers, refers to a very pertinent question, namely, whether or not should there be any expiation at all for any sin committed. He refers to a division of opinion on the point. According to some, one should not perform any *Prāyaścitta* at all, as the sinful deed does not perish before it has produced its result in the shape of punishment in hell and later births; according to the other view, a man should perform a penance for his sinful act. Gautama prefers the latter view. *Baudhāyana* goes further and says that by performing a particular type of penance, a man overcomes everything, conquers all, obtains the reward of all sacrifices, bathes at all the sacred bathing places, performs the vows required for the study of all the Vedas, becomes known to all the Gods, sanctifies a company of Brahmins by simply looking at them and all his undertakings are successful. Thus according to *Baudhāyana*, the conception of *Prāyaścitta* is not only negative, simply to remove the sins for acts committed, but is also positive in as much as it gives rise to certain positive merits over and above the removal of the original sin for which the penance is enjoined.

According to *Viṣṇu*, a man should not transact any business of any kind with sinners who have not expiated their sins; but a man who knows law must not blame those who have undergone the

appropriate penances. This is the main theory of expiation according to which expiation is capable of removing sins.

Definite penances were prescribed for some specific sins ; for the residuary sins a sort of discretion was given to the Brahmans or the *Pariṣads* according to the circumstances of each case. The *Viṣṇu* specifically lays down that in order to remove those sins for which no particular mode of expiation has been mentioned, penances must be prescribed by the Brahmans and they shall be in accordance with the ability of the sinner and the gravity of his offence. To this must be sought the origin of *vyavasthā* which is found to prevail even today for the purpose of expiating certain sins.

Another most interesting feature of the theory of expiation is that it does not involve sins committed only with respect to men but also with respect to beasts, birds, insects, trees and plants, which undoubtedly implies universal catholicity and fraternity. Expiation can be of different forms including *snāna*, *dāna*, *japa*, *dharma* and charity in general. Hence from a very ancient time, in India, charity assumed a special significance in the form of *iṣṭāpatti* etc. The genesis of this charity must be sought in the invocation to the different Gods for gifts and blessings. The opposite conception, namely, punishment for sins and violations was an easy step. Expiation was conceived as a neutralising *via media* between sin and punishment. Expiation can be positive and negative and also wide and narrow. The positive and negative aspects have already been explained above. In its wide sense, expiation includes impurities and purifications. Again it is only in this wide sense that the treatment of the Yati and the Vānaprastha could be included in his *Prāyaścittādhyāya* by Yājñavalkya.

Sins have been variously classified and the theory of expiation postulates many beliefs and fictions. The conception of hells and heaven, and the transmigration of the soul and rebirth are the most important of such beliefs. Regarding certain fictions, reference might be made to some of the provisions made by the sages. Thus if a thief after proclaiming his sin before the king is not punished by the latter, the former will be absolved of the sin, which will then visit the King. Again if a *Pariṣad* wrongly prescribes any penance for any sinner, the sinner thereby becomes free from the sins and the members of the *Pariṣad* are burdened with that sin.

As it has already been noticed, expiation was originally an exclusively religious institution, it then became social-cum-religious-cum-legal, concurrently, and lastly it became social or rather socio-religious.

With the changes in the society and its constitution, penances are becoming more and more obsolete in the present day. The social enforcement of the penances was mainly in the shape of excommunication. The theory of expiation also underwent several important modifications. Originally it was meant mainly to appease the wrath of the God enraged, later to expiate the guilt and rid of evil consequences, and lastly not only for self-purification but also for a wider thing in which the society also was to be satisfied that the sins had been properly atoned for. Sins of individuals touch and contaminate the entire society or community. This can be very well understood from the doctrine that the mere association with the *Mahāpātaka* was itself a *mahāpātaka* or 'great sin'. Thus *Yājñavalkya* rightly asserts that a sinner should in this world perform penances for the purpose of purification and it is by this penance alone that his inner soul and also the outer world or the society would be pleased.

Society constantly changes. The Indian society also is not an exception. Hence some acts which were regarded as sinful have ceased to be so now. On the other hand, new conceptions of sins and crimes have cropped up. Thus many institutions and doctrines were discarded on the theory of *Kalivarjya* and *Lokavidviṣṭa* and many other doctrines had to be drastically modified on the ground of *Āpaddharma*. But the institution of expiation is still a living force, however limited its scope might be. At present the rural society is more conservative, and so the occasions and applications of penances are comparatively more frequent in villages than in towns. Subject to these limitations and reservations, expiation has got its own significance and herein lies the importance of its study.

The correlative of *Prāyaścitta* is sin or *pāpa*. Sin accrues on account of the violation of certain scriptural injunctions. Thus Manu² says that a man who omits a prescribed act or performs blamable act or cleaves to sensual enjoyments must perform a penance. *Yājñavalkya*³ enjoins that by not performing what has been ordained, by resorting to what is censured and by the non-restraint of the organs, a man incurs fall; hence he should in this very world undergo penance or *Prāyaścitta* for the purpose of purification and it is by this penance alone that he can please his inner soul and the worldly society in which

2. XI. 44. See also *Gautama*, XIX; *Vasiṣṭha*, XX. 1-3; *Baudhāyana*, II, iii. 10.

3. III. 219-20, 226. For comments see *Śulapāṇi* and the *Vīramitrodaya*, *Vide* also *Āpastamba*, I. 9.24. 25.

he is placed. Gautama⁴ also enumerates in a general manner certain sins in the form of commissions and omissions. Sins have been variously defined and classified⁵ and various gradations of *Prāyaścitta*⁶ also have been prescribed. There are sins like *atipātaka* and *mahāpātaka* (great sins) which are the most heinous. There again may be sins for killing beasts, birds, insects, trees and plants.⁷ *Prāyaścitta* also has been ordained for those persons who sleep at sunrise and sunset.⁸ There are offences which do not warrant any drastic *Prāyaścitta*. There are again differences between the principal⁹ offenders and the abettors, open offences and secret offences¹⁰ and offences committed

4. XIX. 3.

5. Sins have been generally classified as *atipātakas*, *mahāpātakas*, *anupātakas* and *upapātakas*. The other sins are *jātibhramśakara*, *samkarikara*, *apātrikara*, *malāvaha* and *prakīrṇaka*.

6. Sacrificial offerings and *Vaidvānarī iṣṭi*, recitation of the Vedas, control of one's diet, and austerities including emaciation and annihilation. Some penances have got some technical peculiarities and significance.

7. *Viṣṇu* has given a very elaborate enumeration of the different kinds of beasts birds, insects, trees and plants, killing or destroying which a man has to perform different kinds of *Prāyaścitta*. Thus for killing a cow, a man has to observe *govrata*. A concrete instance of *govrata* is to be found in the *Raghuvaṃśa* of *Kālidāsa*.

8. According to *Gautama*, if a man sleeps at the time of sunrise or sunset, he must remain standing during the day, sit up at night and also fast for a day muttering the *Gāyatrī*. It is interesting that late rising and untimely sleep also were to entail penances. (*Vide Gautama*, XXIII. 21; *Āpastamba*, II. 5. 12. 22; *Manu*, II. 220; *Vasiṣṭha*, XX. 4; *Viṣṇu*, LIV. 11.)

9. The difference between the principal and accessory offenders has been explained with reference to the sin of murder. This distinction is applicable *mutatis mutandis* in the case of other crimes or sins also; cf. *Prāṇivijogaphalaka-vyūpāro hananam iti lokaprasiddham eva. Sa ca yathā sākṣāt-kartus tathā paramparākarturapeti. Eteṣāṃ api hantrtvam. Tena sākṣāt-hantrtvat prayojakānugrahakānumantṛṇimittānām api hantrtvāt pañcānām eva niṣedhaviṣayatvam.*

10. Secret penances occupy a very prominent place in the whole scheme of expiation. Secret penances are prescribed for secret offences. Secret offences again imply those offences which are not declared or known to others. This very conception of secret penances has got two very important principles involved therein. In the first place, this question suggests itself: What is the necessity of observing such a penance at all for an offence which is not known to anybody else? The answer obviously is that even though the offence is not known to others, still the soul of the wrongdoer must be purified to avoid punishment in hell and in the next life. In the second place, it must be noticed that decidedly smaller penances have been prescribed for secret sins. How far this is ethically justifiable is an interesting question.

intentionally¹¹ and offences committed unintentionally. There are also some preliminaries¹² to be performed for the preparation of a penance. The effectiveness or otherwise of a penance performed has got to be tested by offering some grass to a cow.¹³ The nature of the penances has always got to be determined with reference to the age, time, place and the antecedents of the persons involved.¹⁴ Excommunication from the society¹⁵ and re-admission¹⁶ thereto are the two most essential features of *Prāyaścitta*. The conception of excommunication perhaps can be said to have its genesis in the description of the *Abhiśastas*.¹⁷ The word *Prāyaścitta* has been used in a wide¹⁸ sense to include not only atonement for moral transgression but also for impurities¹⁹ and

11. There has been a lot of speculation and discussion amongst the text-writers and the commentators regarding the expiatiability or otherwise of certain sins like Brahmicide especially with reference to the presence or absence of intention,

12. The details of the procedure for the actual performance of *Prāyaścitta* have been given by Kāśinātha towards the close of his commentary on the *Prāyaścittendusekhara* of Nāgajibhaṭṭa.

13. At the conclusion of *Prāyaścitta* some grass has to be offered to a cow by the penitent. If the cow eats the grass, it is to be understood that the penance has been effective. Otherwise the penance will have to be repeated until the satisfaction of the cow is indicated as above.

14. Cf. *Yājñavalkya*, III. 293 :

deśam kalam vayah śaktim pāpaṃ cāvekṣya yatnataḥ !
prāyaścittam prakalpyam syāt yatra cuktā na niṣkṛtiḥ !

and the verse quoted by Bhavadevabhaṭṭa :

jātiśaktiguṇāpekṣam sakṛdbuddhikṛtam tathā !

anubandhādi vijñāya prāyaścittam prakalpayet ||

15, 16. Vide K. V. Rangaswami Aiyangar, *Some aspects of Hindu view of life according to the Dharmaśāstras*, p. 166.

17. The *Abhiśastas* of Āpastamba correspond to the *Mahāpātaks* of Manu and *Yājñavalkya* and the outcasts of Gautama from the standpoint of penance or *Prāyaścitta*. Vide Gautama, XXI. 1 ; *Āpastamba* I. 9. 24. 6-20 ; *Manu*, XI. 35 ; *Yājñavalkya*, I. 1. 294.

18. The later the textwriter, the wider was the connotation ascribed to the term *Prāyaścitta* and more elaborate was its treatment. The culmination of this process of amplification took place in the *Smṛti* of *Yājñavalkya*. This *Smṛti* consists of three *kāṇḍas* of which the last one is termed *Prāyaścittādhyaṣya*. This *kāṇḍa* again consists of five chapters dealing with *śauca*, *Āpaddharma*, *Vanaprastha*, *Yati* and *Prāyaścitta Prakaraṇas*. In the narrow sense of the term *Prāyaścitta*, it is to include only the last part, namely, the *Prāyaścitta Prakaraṇa*.

19. Impurities are generally given rise to by *śauca* in the event of birth and death in a family. They occupy a very important position in the *smṛti* literature and their importance has been rightly emphasised by more or less all the text-writers.

purification²⁰ as well as some observances for dogbite²¹ etc. and earthquake.²² Though originally the terms *ṣin* and crime were indiscriminately used, later on the two conceptions were understood to have concurrent application in the sense that some acts were to be legally punished by the Kings and they had also to be expiated over and above for the purpose of moral atonement or inner purification. Ultimately, of course, the scope of expiation for moral transgression was exclusively dealt with without any intermixture with the legal counterparts. This is pre-eminently to be seen in the treatment of Narada whose treatise was exclusively on legal topics. There is no expiation or penance enjoined here except indirectly in the exhortation of witnesses not to give false evidence. Expiation postulates hell and heaven determinable by the effects of Karma.²³ This again naturally leads to the conception of the transmigration of the soul.²⁴ There are many other philosophical aspects of expiation such as *Yoga*,²⁵ performance of sacrifice,²⁶ visiting holy places²⁷ and bathing in

20. Purification is quite different from and is much lesser than expiation. Expiation is concerned with sin whereas purification is concerned with temporary uncleanness due to some accidental, unconscious or involuntary act rather than some conscious and voluntary act.

21. A dogbite gives rise to an impurity perhaps on account of the uncleanly nature of the animal. The mere touch of the dog gives rise to impurity which has to be removed by bath, says Āpastamba.

22. It is rather curious that there should be penance even when there is a natural occurrence like the earthquake. The reasons are perhaps to be sought for in the popular belief that these natural calamities take place only on account of the sinful transgressions of the people. Therefore the recurrence of such calamities can be avoided by the performance of penances more or less on a large scale basis.

23. *Some Aspects of the Hindu view of life according to the Dharmaśāstras*, K. V. Rangaswami Aiyangar, p. 34.

24. *Ibid.*, pp. 50-51.

25. *Yoga* is competent to eradicate faults like anger, covetousness, perplexity, doing injury to others, hypocrisy, lying, gluttony, calumny, envy, lust, hatred, neglect to keep the senses in subjection and neglect to concentrate the mind. (Āpastamba, I. 8. 23. 5; *Vasiṣṭha*, XXV. 7-13).

26. Various sacrifices have been prescribed for the purpose, *Punaḥstoma*, *Dratyastoma*, *Agnistut*, horse sacrifice etc. (*Vide Lāṭyāyana Śrautasūtra*, IX. 4. 5; *Manu*, XI. 46, 228; Āpastamba I. 9. 26. 12; 27. 11).

27. The *Tīrthas* have got two aspects, positive and negative. According to the latter the sins of a man are removed whereas according to the former some positive merit is acquired which helps him to attain after death some region in heaven. The places of pilgrimage have played and is still playing a very important role in the scheme of more or less every religious system under the sun. For the Hindus there are so many places of pilgrimage visited even by the modern generation with unabated enthusiasm.

sacred rivers and lakes.²⁸ The conception of hells²⁹ and heaven served also the purpose of correctives and deterrents and especially at the early stage of the society the conception could admirably serve the purpose of controlling the society. According to *Vasiṣṭha*, the spiritual teacher corrects the learned, the kindly man corrects the evil-minded, but it is Yama who punishes those who offend secretly.³⁰ This does not necessarily refer to the secret penances for secret offences. This means that even though a sin cannot be detected or punished by any visible authority, still that sin cannot also escape the notice of Yama who is ever vigilant. It is declared that he who has associated with the outcasts becomes pure by reciting *Saṁhitā* of the Veda and by fasting. *Vasiṣṭha* also refers to the quotation of a verse according to which a sinner is liberated from guilt by tormenting his body performing austerities, reciting the Vedas and making gifts.³¹ The sages also realised the deterioration of human virtues. Thus it was regretted that man in this world spoke untruth or performed sacrifices for men unworthy to offer a sacrifice and accepted what ought not to be accepted.³² The importance of *Gāyatrī* has been underlined and it has been provided that a man charged with sins should repeat for purification the *Gāyatrī* 1000, 100 or at least ten times for minor offences. *Vasiṣṭha* goes on to say that if the knowledge of the Vedas is retained, even if a hundred or more sinful acts have been committed, the fire of the Vedas would destroy all the guilts of that man just as common fire would consume fuel.³³ The daily recitation of the Veda and the performance according to one's capacity of the *mahāyajñas* would quickly destroy guilt even that of mortal sins.³⁴ The mere restoration of a thing sinfully obtained does not make the man free from the sin. He must still perform penance for the purpose of self purification. This clearly refers to the subjective rather than the objective aspect of penance. Thus though a thief may have restored to the owner the stolen property in some indirect manner, still he must expiate himself through penances.³⁵ Speaking about the

28. A dip in a holy river like the Ganges or a holy lake like the Mānasa-sarovara is believed even today to be sufficient for every conceivable sin.

29. There are so many kinds of hells with so many different types of tortures according to the nature and gravity of the sins. *Viṣṇu* enumerates twenty-one of them, their names giving an idea about their nature. (*Viṣṇu*, XLIII. 1-23).

30. *Vasiṣṭha*, XX. 3.

31. *Ibid.* XX. 46-47; *Manu*, XI. 194.

32. *Vasiṣṭha*, XXII. 1; *Baudhāyana*, II.iii.10.

33. *Vasiṣṭha*, XXVI. 15.

34. *Ibid.* XXVII. 1-9.

35. *Viṣṇu*, LII. 14.

synod or *Pariṣad*, Parāśara says that whether light or atrocious, the full extent of the sin should be confessed and be reported to the Brahmins constituting the *Pariṣad*, for, like intelligent and skilful physicians in case of disease, it is they alone who can absolve him from sins by advising the appropriate form of penance.³⁶ Regarding the duties of the Brahmins constituting the *Pariṣad*, it has been further warned by Parāśara that Brahmins should neither lay down the form of expiation in a particular case unless commanded by the King to do the same nor give the verdict of absolution without having obtained the permission of the King in this behalf.³⁷ It perhaps tends to indicate that the *Pariṣad* was a legal institution constituted by the authority of the King and not a mere social body. The influence of the Brahmins was there in any case.

36. *Parāśara*, VIII, 6-7.

37. *Ibid.*, VIII, 35.

