

**A STUDY
OF
HINDU CRIMINOLOGY**

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CHAPTER I

काममाश्रित्य दुष्पूरं दंभमानमदान्विताः ।
न शौचं नापि चाचारो न सत्यं तेषु विद्यते ॥

(Gītā 16/10, 7)

“Human being is full of infatuation, wickedness and lustful passion. There is no purity of heart, ideal conduct and no truthful speech” thus says Lord Krishna in the Gītā.

What is Crime :

The Crime is a major Social problem hence the Sociologists and Criminologists all over world have thought of the crime in different terms and this reflects how human mind think and view the matter in varied ways. The world is full of struggles and in this process some may survive and others may fail. This determines the form of behaviour of the individual in the social order. Social-group conflicts arise between the interest of the individuals and the welfare of the group. The impulse and desire arise out of instincts and emotions which determine the human intention and ill thinking carry persons some time to commit offences. Thus the violation of social laws is termed as crime or anti-social behaviour. The criminal minded person tries to supersede the existing social laws, capture the power against social norm and violates the moral customs of the community. The criminal is a person who failed to tame his impulse and to transform them into social acceptable ways. The offender works in

his own interest and thereby he transgresses the authority and law of the country. No doubt individual is a member of society and his survival means the solidarity of the social order. The social groups survive on the basis of behaviour and circumstances of the individual member. The social pathology reveals that criminal minded and law abiding citizens are woven in the same cloth and both have anti-social and constructive or destructive traits. It differs in stimuli in their personality and make up. Southerland and Cressey define crime as an act prohibited by laws. No matter, what the degree of immorality or indecency of an act, may be, it is not crime unless the behaviour is against the existing laws of the society (Principles of criminology p. 11). Anti-social act may not necessarily constitute a crime until it is punished by law. The anti-social offence should be repressed for social safety, as the crime is recognised a wrong and harmful act to society.

The legal and sociological definition of the crime is not the same. In legal term crime is the violation of law and in other words the crime is an act of omission that breaks law and subject to public punishment (Dr. Kane-History of Dharma Śāstra Vol. III. p. 386). But from the social point of view all anti-social acts are not crime because it may not be held crime at some other time or place. Thus in sociological sense crime is a shifting phenomenon. Society is always endeavouring to prevent criminal acts which are not yet registered as legal. Taft defines crime as an expression of human selfishness (Criminology P. 104), but all actions of mankind is not crime as the act is socially

approved at some other locality and time (Wiekins-Social Sciences p. 476). So any definition of crime does not have large element of circularity view.

The Crime is defined in the term of the social Institution and their organisation in a social complex. It is organised through same process as behaviour different from the norms and rules of the Institution. Human being is more sympathetic but becomes obnoxious to society and so he is classified as criminal. The concept of Crime depends on group interest but the social ideas of virtue and vice change from time to time and place to place. That is why crime changes with change of customs and environment. It (Crime) is abnormal conduct about which society has built up some definite notions. The Crime is more individualistic than social. The truth is that the Crime is as old as society. But the violation of the social morality and criminality are much more fundamental. Man exists for himself and he expresses anti-social behaviour in his private or family life. The same is the condition in the business or international relations as well. There are not two opinions that the man is a social being and the philosophy behind the existence is to secure happiness of greater numbers and act for the sake of social group. In the world one cannot imagine a life which may be poor, devoid of pleasure and content, narrow and miserable. In the notion that I exist for myself, conflict arises and naturally there is clash in the social community. The conflict is reconciled, where law carries the dictates of the social conscience i.e. punishment proposed for the Crime. Ferri says that Crime is the result of condi-

tions so stalic that amount could be predicted from year to year with accuracy (Criminal Sociology p. 76).

From the sociological point of view there is difference between social act which may be fatal to one group and beneficial to others. So crime is a forbidden act.—

1. Immoral according to the preventing ethical standard,
2. Harmful to society,
3. Repressed by penal measures, and
4. Repression necessary to preserve the existing social order.

The analysis shows that the motives which prompted the social action by the individual are of two different natures.

The first motive behind is the sense of Egoism where the person gains mastery over the other motives which may be rewarded or punished. In the second place the motive contains the solution of the problem of self-denial in which the action is not merely for himself but for the service of humanity. This leads to the advancement of the interest of the community. Like modern conception, Indian sages laid emphasis upon the criminals rather to crime, because survival of the individual means the existence of the social order. Thus the Human impulse and right behaviour may lead to success and thereby the community will be benefited by the individual conduct.

If the social customs are violated, it would result in the hostility to community and the punishment is the expression of the moral indignation

to wrong doers. Therefore it is stated that the study of the pathological traits are very necessary in the cases of criminals where such conditions existed prior to the criminal behaviour. The feeble minded persons commit crime and this mental state is the cause of delinquency. The criminal behaviour of a person is the direct expression of the instinctual urges.

This was the reason that people were instructed and educated to mould their lives in the interest of society and of one-self. Education is the powerful force of civilization and it was fully realised by ancient rulers of India. To achieve the goal the great king Aśoka engraved his orders (Dharma Śāsana) on the blocks of stones or pillars situated at strategic places and the people were asked to read them and follow the righteous path. The society was guided by those edicts and individuals behaved in the similar manner. They thought that the person was the centre of gravity and not the recording of crimes and its process, so the character building was more emphasised than the control of crime.

If this problem is viewed in another way, the conflicts in the social group or among individuals depend on the 'Passion, Anger, Greed and Confusion' of a person indulged in social activities. The violation of the norms and social standard by the man creates confusion and thus he is declared as offender or wrong doer. The infringement of normal human behaviour, traditions and customs are to be avoided, hence attention has been shifted to the offender rather than the occurrence of crime. Jolly has not looked this problem (Hindu

Crime) in the right perspective and satisfied himself with the impunity of the Brahmins and other penal matters. (Encyclopaedia of Religion and Ethics, Vol. IV. p. 283).

The crime is the outcome of ignorance and want of thinking according to our ancient writers, so a malignant person acts in a criminal way. The basic cause may be assigned to the jealousy and vicious behaviour resulting in disorder of the society. The similar idea is echoed in the following line of Gītā (17/19).¹

Human behaviour is influenced by four different aspects or roots :

1. Society-representing larger number of people,
2. Community and its sub-culture,
3. Particular family set up,
4. Individual himself.

Among these four the relationship is complex and dynamic. All offences are not anti-social and vice versa. For example alcoholism may be anti-social but not a crime until alcoholic commits certain type of crime i.e. bad action which involves punishment. According to Vardhamana Upadhyaya, the crime always produces and causes alarm to people लोकोद्वेजकत्वम् (Danda viveka) and this is regarded as predominant feature of a crime in ancient India. The evil doers harm others and stir the spirit of the society by means of their anti-social behaviour.

While crime is violation of public rights, Sin is defined as individual violation of moral laws and

¹ परस्योत्सादनार्थं वा तत्तामसमुदाहृतम् ।

normal conduct determined by regulation reaching much beyond than those imposed by legal process. It (Sin) reflects the internal factor of human character. The manifestation of those sins may be called vices. Therefore Sin is more individualistic than social element (J. S. Machenzi-A Manual of Ethics, p. 370).

Classification of Crime :

The classification of crime depends on certain factors where offenders behave according to the surroundings and conditions. Broadly, following three types of classification may be suggested :

(1) Crime against social customs and standard morality. Such as immoral acts, alcoholism, prostitution and violation of social laws.

(2) Crime pertaining to the individual—homicide, killing, torture, incest, adultery, rape, abuse, and humiliation.

(3) Crime against property—robbery, theft, gambling, forgery, set fire, pickpocket etc.

Hindu Śāstras dealing with crime, often mention two words—Sāhasa and Pārushya. The first word includes those criminal acts which require sufficient strength in the operational process, while in the second cruelty, harshness and heartless features are involved. Thus robbery and theft are separately mentioned in the list of crime by Manu (8/72 and 332). While abuse or humiliation and assault are classified in Pārushya. Rape is classed as different kind of crime.¹

¹ साहसस्तेयपारुष्यगोमिशपात्यये स्त्रियाम् । (Yaj. 2/12.)

Manu (7/52) has given a categorical statement that drinking, gambling, adultery, poaching, cruel assault, harsh utterances and theft are prominent crimes in the society and one is more harmful and troublesome than others. Kautilya (3/17) has dealt with Sāhasa in detailed manner and he has supported the earlier Smriti writers. Narada (10/1) and Sukra are of the same view and described ten different types of crimes prevalent in the society.¹

Disobedience, killing of women, confusion of caste through intermarriage, adultery, theft, conception without husband, abuse, censure, assault, and abortion are listed by the later Smriti writers as the ten important crimes.

The central idea of Hindu criminal jurisprudence from very beginning was that the punishment to be meted out to offenders and wrong doers by the king for the preservation of the society. None can be excluded from penal treatment by the king (Manu 8/335) and if he cannot protect the society from criminals, the king is hatred by the people and the subject is full of odium against the ruler.²

In Ancient Indian criminal law one finds the sliding application of penal treatment where crime and punishment are not balancing each other. Hindu

¹ आज्ञोच्छेदनं कर्तारः स्त्रीवधो वर्णसंकरः ।
 परस्त्रीगमनं चौर्यं गर्भहृत्तैव पतिं विना ॥
 वाक्पारुष्यवाच्याय दंडपारुष्यमेव च ।
 गर्भस्य पातनं चैवेत्यपराधा दशैव तु ॥ (Śukranīti Sāra 4/601)

² साहसे वर्त्तमानन्तु यो मर्षयति पार्थिवः ।
 स विनाशं ब्रजत्याशु विद्वेषश्चाधिगच्छति ॥ (Manu 8/346)

Smriti writers paid sufficient attention to the humanitarian attitude and society did not favour harmful and cruel penology. The society cannot achieve success in cruel, harmful and heartless penal treatment against the offenders, but the criminality can be lowered with soft and mild treatment with wrong-doers. Ancient Indian sages focussed their attention to the root of criminality, avoidance of crime, and unlawful activities rather than the adoption of strict penal policy. The literary evidences on these topics lack support by the operational practice in objective manner.

Historical Survey :

It has been regarded as mere coincidence that with cultural changes of a country, the social disorganisation occurs simultaneously. The culture is a complex one which organises the human thinking, emotions and values. The social order is shattered due to the embalancing tendencies and change in the strong social organisation. The foundation of the society becomes shaky and the change in the human behaviour is quite apparent. New changes in the ancient cultural thoughts, behaviour and beliefs are not to be accepted amicably and they can not be adopted by the individuals. Western criminologists have regarded this type of social changes as need of the hour and man due to his failure in life and on account of the social reactions, looses the balance of mind and hence the change in social behaviour. It has come to light by modern researches that problem of social disorder is associated with the movement of human population. This process is visible in the cultural inter-mixture and

citizenship. In the face of the old cultural thoughts, the new one has not so much propriety.

In ancient India Aryan culture spread with the advancement of Aryan race. Dasyus have been placed in the separate compartment. New system of thoughts prevailed on the basis of the values of Aryan life, which is gleaned from the study of Vedic literature. The social organisation was planned on such an ideal way and blanced manner that the individual was devoid of criminal mind and behaviour. There was no occasion to act against the social morality. There was no casual occurrence for immorality and display of characterless personality. The question of individual offence cannot be ruled out and delinquency was not unknown in the Vedic period. Vedic society knew person non grata but on such instances nothing can be generalized. Religion has great part to play in the Indian society and idea of Heaven and Hell is deep rooted and established notion as reward and punishment respectively for moral person and offender. This was the reason that individuals in the Indian Social order acted with the desirability to get pleasure and happiness and to avoid trouble and displeasure in life. The organised offence and violence of social moral laws were not worth enumerating. Immoral actions and other example of delinquency were negligible. Expression of selfish and immoral behaviour were regarded as Crime (offence) and it was not the regular occurrence. The social organisation of Vedic age can be gleaned through the working of Vedic Sabhā and Samiti, the two prominent organised Institutions. Aryans did not have civil planning and urban

life was not heeded. Vedic hymns and prayer were offered for the welfare of village life, and the institution of Sabhā (Village Sabhā) was established on a democratic outline. In the modern time we can use the word Panchayata for that Vedic Sabhā which had the responsibility of all round development of the social life. It also protected the Village from the attacks of the Dasyus. The second organisation i.e. Samiti was constituted on the similar line and it consisted of several members worked jointly known and collectively as Ratanin. The president of village council (Grāmani) was one member of that Vedic institution. He was elected by a democratic system, but some scholar has the view that it was hereditary. The Grāmani was eager and sincere for all organisational activities, enforcement of social laws and to keep the morale of the village. He was conscious of his duties and stood for fulfilment of social values. The Grāmani seems to have been connected with the settlement of disputes, prevention and punishment of crime. The Jātaka stories refer to the judicial power of the village headman (Grāmani or Grāma Bhojaka) but later on he does not seem to continue to retain his historical importance (The Hindu Judicial system-Varadachariar p. 74-5). However it can be definitely stated that village assembly enjoyed a power and unity of the purpose which prompted Grāmani to judge and deal impartially with the offences.

It is needless to emphasise the power enjoyed by the village headman and its existence as independent unit in the administrative machinery. Grāmani wielded all round power and due to his impartiality, none

felt jealous of others. Greed and jealousy are the root cause of crime and in the village life there was no scope for these vices to develop. This state of affair continued in the following centuries and also in the Muslim and beginning of British rule in India. Village assembly enjoyed the same status as in Vedic age. Even in Section 6 of 1870 act, Britishers accepted the principle that the Panchayat must be vested with the power of village protection, which was later on snatched away from the village unit (Police administration in India—S. C. Mishra p. 128-30). From that period the community life in the village and proper interest in its working disappeared from the Indian social life. People lacked ancient Indian group harmony and the line of thinking in the society. Gradually the group or social behaviour was out of question and delinquency became the topic of the day. It is not the proper place to deal this question in detail and the working of the British administration in India. This topic may again be emphasised that we have little account of crime in the vedic period. In the later Vedic age the ordeal is mentioned as testimony in the cases of theft. The Upanishads deal with the problem of knowledge and hence ordeal was the only means to find out and testify the ignorance of the individuals. In Chhandogya Upanishad (6/16/1) the following lines make the whole matter clear and establish that some kind of ordeal was undertaken to prove the validity of the theft.¹

¹ पुरुषं सोभ्योत हस्तगृहीतमानयन्त्यपहार्षीत् स्तेयमकार्षीत् परशुमस्मै तपतेति ।

स यदि तस्य कर्ता भवति तत्पवानुत्तमात्मानं कुरुते सोऽनुतामिसन्धोऽनुतेनऽऽत्मानमन्तर्धाय परशुं तप्तं प्रतिगृह्णाति स दह्यतेऽथ हन्यते ।

In the case of theft if doubt arises, and the culprit is said to be a thief by the officers, (while denying the theft) the parishad has the responsibility to judge the offence. The wise men adopted a device to test the truth or falsehood. The offender is asked to hold a red hot hand axe and if unhurt, he is declared honest, otherwise on the burning of his hand the man is called a criminal and the penalty was death. Such scattered statements have to be taken into consideration, but the violation of social laws which bring social group in calamitous condition is the real crime (History of Dharma Śāstra Vol. III, p. 386). In ancient Indian polity, war-like tendencies did produce struggle and some criminal type of behaviour but the invaders did not employ destructive measures for annihilation of humanity and eradicate social order. One major historical instance may be mentioned against the above statement where Magadhan Ruler Ajātaśatru deputed his envoy to create dissention in the social group of Lichchhavi Community and thereby to gain and achieve his game. It was pre-plan to attack on the Vrijjis and expand the Magadha dominion over the Transe-Ganges region. Lord Buddha knew it and did advise Ajātaśatru to abstain from invasion and uprooting the solidarity of the Lichchhavis. Buddha had told Ajātaśatru that they are invincible as the Lichchhavis were strangely united. The idea behind this narration is to believe that crime can not be encouraged where the society is well organised and the values are honoured and respected. In the Buddhist Saṃgha, Vinaya was to be followed strictly and equality was to be maintained by the monks. Therefore criminal