

PUNISHMENTS FOR ABETTORS – ITS NEEDS AND PURPOSES

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Abstract

The well being of a society is ensured by good governance. Law and administration play a major role for a secure and prosperous nation. Bhārata the most ancient civilisation of the world has rich cultural heritage with good governance. Laws were framed from time to time to suit the changes in society. These laws are recorded in the Dharmaśāstra or Smṛti texts.

Punishment is perceived as an effective means to maintain law and order. Crimes are of different kinds of which one is to commit and the other is to make another commit an offence or crime. The latter is to instigate or abet another to commit a crime. This was also observed by the ancient law givers and punishments were ordained for abettors. Modern Indian law also has separate sections dealing with abettors and punishments. This paper intends to bring out the offences identified as abetment in ancient and modern law. By this the society at large can be made aware that abetment is also a serious crime or offence.

Peace and order in the society is maintained by the King or the government only by framing and implementing laws and punishments. This is well stated in the *Mahābhārata* and Purāṇas.

The *Mahābhārata*¹ states that people do not commit sins through fear of punishment at the hands of the king (government), through fear of Yama and of the next world and through fear of public opinion—

राजदण्डभयादेके पापाः पापं न कुर्वते । यमदण्डभयादेके परलोकभयादपि ॥
परस्परभयादेके पापाः पापं न कुर्वते । दण्डस्यैव भयादेते मनुष्या वर्तमानि स्थिताः ॥

Kautilya² opines that the *danḍa* or the science of polity is very important in ensuring the pursuit of philosophy, Vedas and Economics. Only that king who is 'just' in administering *danḍa* is honoured and in absence of the wielder of the rod the stronger swallows the weaker³ -

यथार्हदण्डः पूज्यते । बलीयानबलं हि ग्रसते दण्डधराभावे ।

Crime and Punishment

An act or omission that breaks the law and is subject to public punishment is generally⁴ termed as crime. But all breaches of law do not result in punishments; only some do. Only those breaches are crimes which are deemed to be menaces to the conditions of existence of society and recognized by the rules or legislatures as preventable only through punishment.

Crimes constituted have been largely grouped under five heads as- *manuṣyamāraṇa* (man-slaughter), *cauryam* (theft), *paradārābhimarṣaṇam* (adultery), *vākpāruṣya* (defamation) and *danḍapāruṣya* (assault)⁵.

The awards of punishment, as laid down by Smṛtis reveals that they were regulated by many factors as - consideration of the motive and nature of the offence, the time and place, the strength, age, conduct, learning and monetary position of the offender and by the fact whether the offence is repeated⁶ :

पुरुषं चापराधं च कारणं गुरुलाघवम् । अनुबन्धं तदात्वं च देशकालौ समीक्ष्य च ।
उत्तमावरमध्यत्वं प्रदेशे दण्डकर्मणि । राज्ञश्च प्रकृतीनां च कल्पयेदन्तरान्वितः ॥

Need for punishments

In Ancient India though the science of penology was not developed exclusively, the *Smṛti* writers were quite aware of that -

- a) Punishment to the wrong-doer serves as a warning to all others that might be tempted to tread the paths of violence and

crime⁷. Gautama⁸ derives the word *daṇḍa* from the root *dam* meaning 'to restrain' or 'to deter'.

- b) It is a means to ensure the protection of society, thereby securing peace in the state.
- c) It also protects the wronged from wreaking vengeance on the person(s) who harmed him; instead the state punishes the criminal.

Abettors or *kārayitā* in Ancient Indian law texts

*Āpastambha Dh. S.*⁹ states in general that in any act three people are involved - the benefactor, inciter and the doer; they share the fruits of heaven and hell according to the nature of their acts -

प्रयोजयिता मन्ता कर्तेति स्वर्गनरकफलेषु कर्मसु भागिनः ।

Kātyāyana¹⁰ defines an abettor as a person who helps the commission of an offence, *viz.* one who supplies weapons, gives food and shelter or asylum, one who incites or advises as to how the offence should be committed. Since he is guilty of aiding the offence, should be punished -

आरम्भकृत्सहायकश्च तथा मार्गानुदेशकः ।
 आश्रयः शस्त्रदाता च भक्तदाता विकर्मिणाम् ॥
 युद्धोपदेशकश्चैव तद्विनाशप्रदर्शकः ।
 उपेक्षाकार्ययुक्तश्च दोषवक्ताऽनुमोदकः ॥

Modern Indian Law

Section 108 in the Indian Penal Code defines an abettor

“An abettor is a person who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law committing that offence with the same intention or knowledge as that of the abettor.

Explanation —The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Punishment for abettors :

The abettors or inciters form an integral part of crimes or violence. The Ancient Indian Law makers were quite aware of such acts and have dealt with punishing the inciters. A survey of the Smṛti texts reveals much on this matter. It could also be seen that the act of instigation or abetment to commit an offence was viewed more seriously than the offence itself. Abettors were liable to double or four times the punishment of the person who commits the crime. With this background, a comparative analysis of ancient and modern Indian Law on abetment is discussed below:

1. **Aiding criminals-** Kātyāyana¹¹ mentions the kinds of abettors as stated above (while defining an abettor) adds that all these abettors are practically perpetrators of the crime and should be punished according to their ability and their guilt -

अनिषेद्धा क्षमो यः स्यात्सर्वे तत्कार्यकारिणः ।
यथाशक्त्यनुरूपं तु दण्डमेषां प्रकल्पयेत् ॥

Kauṭilya¹² also opines that a person shall have to pay the highest fine for supplying the murderers or thieves with food, accommodation, tools, fire or giving counsel or rendering service to them.

हिंस्रस्तेनानां भक्त-वासोपकरण-आग्नि-मन्त्रदानवैय्यावृत्यकर्मसु उत्तमो दण्डः...

For those who begin an offence or abet its commission Bṛhaspati¹³ prescribes half the punishment prescribed for the wrong doer –

आरम्भकृत्सहायश्च दोषभागी तदर्धतः ।

Section 108 as stated above holds that the person abetting is liable to punishment. In recent case of Mr. Rajiv Gandhi Assassination, Nalini Hariharan can be taken as a case of abettor who claims that she had no idea of the conspiracy, is still awarded life sentence by the Indian Judiciary for abetting the crime by providing food and shelter to the criminals.

2. **Inciting with monetary benefits:** Kauṭilya¹⁴ following Yājñavalkya¹⁵ prescribes for a man who incites another to crimes of violence double the punishment to be inflicted on the perpetrator himself and four times for one who incites another by assuring him that he shall provide the money required:

यः साहसं प्रतिपत्तेति कारयति स द्विगुणं दद्यात् ।
यावद्विरणयमुपयोक्ष्यते तावद् दास्यामीति स चतुर्गुणं दण्डं दद्यात् ॥

SECTION 109 : Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no extra provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation : An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation or in pursuance of the conspiracy, or with the aid, which constitutes the abetment. A and B conspire to poison Z. A in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

The best illustration of these kinds of abettors is found in the epic *Mahābhārata*¹⁶. Duryodhana envious of the popularity of the Pāṇḍavas conspires with the advice of Śakuni and Karṇa to kill the Pāṇḍavas. The minister of Śakuni, Kanika counsels Dhṛtarāṣṭra to kill the Pāṇḍavas. In the meanwhile Duryodhana also convinces his father and succeeds in sending the Pāṇḍavas to the Lac palace. Kanika and Śakuni are the evil advisors, Dhṛtarāṣṭra is the *anumodaka* who supports the evil.

In *Mṛcchakaṭikā*, Āryaka, who was imprisoned for treason had escaped from the jail and accidentally got into the awaiting carriage of Cārudatta, which was to fetch Vasantasena. Āryaka considered

as a criminal by the then government was now found in the carriage owned by Cārudatta; hence Cārudatta found guilty of abetting the criminal was ordered to be hanged by the judges. Here it is seen that the act of lending service to the criminal is the offence.

Mudrārākṣasa mentions that Chandanadāsa was ordered to be impaled by Cānakya for sheltering Rākṣasa's family. Rākṣasa was the loyal minister of the Nandas; he was blamed of inciting a poison girl to kill Candragupta Maurya to avenge the death of his masters. Hence, Chandanadāsa, the helper of Rākṣasa gets sentenced to death for supporting the family of the inciter, namely Rākṣasa.

3. **Conspiracy of murder** : Kauṭilya ¹⁷ also declares that if a group conspires together and beat a person, the punishment for each incite others to hit severally shall be double the prescribed punishment for the offence and the punishment shall be severe for those who injure him. Here, the one who hits and also incites others to hit through his verbal actions or otherwise may be taken to be the abettor:

तं चेत्संभूय वा हन्युः पृथगेषामपराधद्विगुणो दण्डः । उपहन्तुषु विशिष्टः ॥

SECTION 117 : Whoever abets the commission of an offence by the public generally or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration : 'A' affixes in a public place a play card instigating a sect consisting of more than ten members to meet at a certain time and place, for the purpose of attacking the members of an adverse sect, while engaged in a procession. A has committed the offence defined in this section.

4. Abetment of officials:

- i. Kauṭilya¹⁸ in mentioning the duties of the superintendent of cattle pronounces that "the person who kills an animal or incites another to kill or steals or incites another to steal shall be executed –

स्वयं हन्ता घातयिता हर्ता हारयिता च वध्यः ।

SECTION 115 : Whoever abets the commission of an offence punishable with death or *[imprisonment for life], shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; If act causing harm be done in consequence and if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Illustration - A instigates B to murder Z. The offence is not committed. If B had murdered Z, he would have been subject to the punishment of death or 1 [imprisonment for life]. Therefore A is liable to imprisonment for a term which may extend to seven years and also to a fine; and if any hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine. Subs. by Act 26 of 1955, sec.117 and sch., for "Transportation for life" (w.e.f. 1-1-1956).

- ii. Kauṭilya¹⁹ in describing the duties of a city superintendent mentions cases of punishment for officers neglecting an offence. (a) In the instance of taking a corpse to crematory grounds particular routes were allotted. Violating this if the corpse is taken by a different route the officers in-charge of the gates were also to be fined. The violators paid only the lowest fine but the officers paid a high amount of two hundred *panās*:

मार्गविपर्यासे शवद्वारादन्यतश्च शवनिर्णयने पूर्वः साहसदण्डः । द्वास्थानां द्विशतम् ॥

"For guard preventing what ought not to be prevented and not preventing what ought to be prevented, the fine shall be double that for the forbidden watches":

रक्षिणामवार्यं वारयतां वार्यं चावारयतामक्षणद्विगुणो दण्डः ॥

- (b) Kautilya²⁰ also declares that - the jailor setting free or allowing the escape of an accused, from the lock-up should be punished with a middle fine and the payment of the amount in the suit; from the prison house confiscation of the entire property and death:

चारकादभियुक्तं मुञ्चतो निष्पातयतो वा मध्यमः साहसदण्डः अभियोगदानं चबन्धनागारात् सर्वष्वं वधश्च । चारकादभित्त्वा निष्पातयतो मध्यमः भित्त्वा वधः बन्धनागारात् सर्वस्वं वधश्च ।

- (c) Kautilya²¹ prescribes execution for the officer in-charge of treasury when he himself robs and half the fines for those who help him:

कोशाधिष्ठितस्य कोशावच्छेदे घातः । तद्वैय्यावृत्यकरणामर्धदण्डाः ।

SECTION 116 : Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence for a term which may extend to one-fourth part of the longest term provided for that offence; or with such fine as is provided for the offence, or with both ;

If abettor or person abetted be a public servant whose duty it is to prevent offence: - and if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend

to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustration– A, a police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine. B abets the commission of a robbery by A, a police-officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

CONCLUSION

A bird's eye view of laws both ancient and modern reveal that any transgression of law was an offence and abetment was a severe offence. The abettors are to be handled gravely to reduce the crimes in a society. The negligence of the officers in preventing the commission of such offence was also punishable.

The Smṛtis, especially the *Arthaśāstra* considered the offence of abetment to be of greater gravity than the offence itself and provided for double the punishment. This is essentially because the person who for some reason wants to transgress law or conspires to commit crime is emboldened to it by the inciter. Mere words of encouragement or support make one commit the offence with ease. Also a person who may be merely vacillating as to whether to commit the crime or not will surely be emboldened to commit with inciters support and takes it to be correct and transgresses law.

Even the innocent are made criminals by the inciters. They sow the seed of crime and nurture it even without the knowledge of the person who would turn a criminal acting on it. This grave element was identified by the Smṛti makers and hence double the punishment was ordained.

A simple act as it may seem of bribing a government employee is also taken notice and severe punishment ordained for them. This, when left unpunished increases corruption and stunts the growth of the society.

Implementation of laws and punishments are more important to instil fear in the offenders and confidence in the minds of the citizens. As is seen, the modern society is crippled by the power of corrupted officials. If both the citizen who gives bribes and the official showing favours by accepting it are severely punished, India can be a land of Gods.

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2. *Mṛcchakaṭīka* of Śūdraka, ed. With com. Eng. Tr. and notes by M.R. Kale, MLBD, Delhi, 1988.
3. *Yājñavalkyasmṛti*, with eng trans. By M. N. Dutt, Parimal publications, Delhi, 2005.
4. *History of Dharmaśāstra* Vol.III, P.V. Kane, BORI, Poona, 1946.
5. *Sacred books of East*, ed. Max Muller.

ENDNOTES :

- 1 *Śānti Parva* (15. 5 - 6) also Cf. *Matsya Purāṇa*, 225. 16-7.
- 2 *Arthaśāstra* I. 4. 3
- 3 *Arthaśāstra*. I. 4.10
- 4 *English Oxford Dictionary*.
- 5 *Nārada*. XVII. 2. *Smṛticandrikā* . II. p. 312
- 6 *Arthaśāstra*. IV. 10; also Cf. *Manusamhitā*. 8. 126; *Gau. Smṛ.* XII. 48-49 and *Vasiṣṭa*. 19. 9
- 7 Cf. *Mṛcchakaṭīka* X after v.11: The sentence passed on Cārudatta for the alleged murder of Vasantasenā is proclaimed to the citizens by the executioners: शृणुत आर्याः शृणुत । एष आर्यचारुदत्तो नाम ।

एतेन वसन्तसेना मारिता । तदा राज्ञा पालकेन वयमाज्ञप्ता एतं मारयितुम् । यद्यपर
ईदृशमुभयलोकविरुद्ध ।

- 8 Gautama. XI. 28
- 9 *Ap. Dh. S. II. 11. 29.1.*
- 10 Kātyāyana 832 and 834; 833
- 11 Kātyāyana 832 and 834; 833
- 12 *Arthaśāstra* IV. 11.9
- 13 Sacred Book of East. 33. p.364 v. 32
- 14 *Arthaśāstra* IV. 9. 22, 27
- 15 *Yājñavalkya Smṛti*, II. 234
- 16 *Ādi parva*. Ch. 141 - 43.
- 17 *Arthaśāstra*. III. 10.41-42
- 18 *Arthaśāstra*. II. 29.16
- 19 *Arthaśāstra*. II. 36. 31-32; II.36.40
- 20 *Arthaśāstra*. III. 17
- 21 *Arthaśāstra*. II. 5. 17-8.
