

Religious Influences in Penology: Tracing the Journey of Penology from Ancient Religious Texts to Modern Legal Provisions in India

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Abstract

This article is the culmination of two things; the first as an answer to the curiosity that the authors had regarding religious punishments and their legal as well as moral sanctity. The second is an attempt to understand punishments in different religions, especially Hinduism, Buddhism, Jainism, Sikhism, Islam and Christianity and contrast it with the findings of modern penology. The theoretical understanding of penal methods is contrasted with the punishments prescribed in various religious texts and ancient as well as medieval codes of punishments. The article traces the journey of penology from among the ancient practices to the culmination of modern-day punishments. The journey of the evolution of different methods of punishment as a means to bring order to society and the relevance of the modern jurisprudence of penology is discussed in detail. The article is focused on bringing a clear distinction among the reasons for punishments. The need and necessity for substituting modern positivistic aspects of punishments instead of the moral aspects of punishments as prescribed in the religion are discussed and elaborated in this article.

Keywords: Modern Legal Provisions, Religious Text, Penology.

INTRODUCTION

Introduction to Legal and Religious Punishments

The issue of dealing with religion in an academic atmosphere may sound easy. However, it is an extremely difficult and time-consuming process. This is not because of the depth of the literature or the intricacies in understanding religious issues but because religious matters are intimately bound up with the feelings of human beings. A person of religion is very difficult to reason with, especially with that of analytical positivism. The fact that a religious person wears a religious aura prompting to filter any attack on the fundamental aspect which is of a religious basis. The application of critical reason to faith and belief is a hindrance to the discussions and dialogues. Thus, religion can only be understood by sympathy and can only be expounded by the writer wearing the shoes of the religious person and placing himself, for the time being, in the heart of that religion and understanding it as it would for the most devoted and learned adherents.

Human beings carry within them the idea and seeds of religion, unlike other living creatures. This seed of religion originates from curiosity and craving for knowledge. The search for causes to the effect in a cyclic manner draws human beings to a point where there is some cause of which there is no former cause. This search ends when the tools for searching further do not exist, and this State is presupposed as eternal. This eternity can be understood as God in a metaphysical state. The inquiry into the natural causes will be limited if the belief in God and the existence of something eternal ceases. With the creation of God and attributing God to the natural causes of things, the power to do good and harm, and the reason for success and failure, human beings have fancied many gods in many forms. These attributions arise from the fear of things invisible or inconceivable to reason, which is the natural seed of religion. This fear makes human beings worship God. These seeds of religion and the ideas that sprout from them eventually get formulated indirectly into laws. These seeds of religion, which have built within themselves ignorance of all kinds, a kind of perpetual fear, have fueled the imagination of humankind. This has resulted in different ceremonies over some time, and in all probability, different from what others have imagined.

The study with regard to the origin of religion is much more complex than what is described above. But for brevity, let us look at the origin of Christianity and Islam from the above proposition. Even though this will be

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covered in the forthcoming paras, it is succinct to understand that the seeds of religion were sown by the people who had no idea about the understanding of life and its origin, as well as the physical aspects of this world. Similar reasons can be seen in the religion founded by Mohammed, often attributed to the common people, that the religion has precepts which were the dictates of some divinity. Mohammed thus pretended to have conferences with the Holy Ghost in the form of a dove. The obedience was sought to the pleasure and displeasure of the Gods, which later took the tone of religious laws and codes. This was made to bring peace to the people by prescribing ceremonies, supplications, sacrifices and festivals through which the blessings of Gods may be secured, and the anger of the Gods appeased.

There are other instances where the seeds of religion are not attributed to any messenger or saint but to God itself. This is by way of God, making a peculiar kingdom and laws governing it. In this kingdom of God, the policy and laws are civil and part of religion.

The religious conception and understanding of punishment may vary drastically; however, the context in which the explanation for the punishment of offences is sought may be correlated and limited to the legal counterparts of religious sanctions. The religious concepts may differ from the legal ones, but for an analysis to be made possible, this brevity is necessary. A system of rules which regulates an activity is different from a system of rules which defines the activity. The religious way of rules correlates with that of a constitutive system, where the respective sphere of activity is predetermined, and regulations are not considered important. It talks about what religion is, what is its purpose and there is no question of derogation from its fundamental principles. However, the legal system provides for a more elaborate scheme of regulation of human conduct.

Thomas Hobbes describes punishment as an evil inflicted by public authority for a transgression of the law and to make the man obey the law. This definition of punishment is that the natural consequences of a person's action are not considered. For punishment to be effective, the harm caused by punishment must be greater than the benefit of the crime. Punishment can only proceed from public authority and not from anyone or anywhere else. Thus, a divine punishment cannot be seen as punishment by the public authority as man's authority does not inflict it. This distinction is crucial in our understanding of sentencing for offences about legal and religious ones. This distinction brings in the general distribution of punishments into divine and human.

Legal punishments require that there must be an offence committed. For an act to be legally punishable, it must have publically observable effects. However, the scheme of religious punishments and rewards is different. The legal definition of punishment cements that the punishment inflicted must be the work of human agencies and not the product of natural consequences. However, the religious view of punishment includes natural events and their consequences as the displeasure of the divine. Religious punishments can be classified into two: worldly and otherworldly. Reward and punishments may be in another world also. The religious punishments for offences can be repented or remitted through religious rituals, and divine forgiveness can be sought to contrast the legal amnesty or pardon.

Human punishments are those inflicted by the sovereign's command; They can be corporal, pecuniary, disgrace, imprisonment, exile or a mix of these. Divine punishments arise out of the natural kingdom of God. The divine laws can be understood as the dictates of natural reasons. The actions of divine worship are intended to please the divine and not succumb to the rage of the divine. Prayers, thanksgiving, gifts, sacrifices, and obligations are signs of honour. The displeasure is met with punishments which are natural and divine. This is linked with a long chain of actions and consequences. A person who does anything for pleasure must also suffer all the pains that are attached to it. Thus intemperance is punished with diseases, injustice with the violence of enemies, pride with ruin, cowardice with oppression, negligent government with rebellion and rebellion with slaughter. As legal punishments are consequent to the breach of the laws, natural punishments must be naturally consequent to the breach of the divine law. This brings in disproportionate punishments within the ambit of different religions. At times, the structure of punishments may vary among different subjects within a religion, as is the case of the Varna system, which prevailed in the practice of Hinduism.

Religious Offences and Punishments in Hinduism

The origins of Hinduism can be traced back to the Indus Valley Civilization and Aryan Civilization. Documentary and Archeological evidence are limited and insufficient in establishing this fact. However, this is the common perception of most of the believers. Manu is attributed as the great initiator responsible for the selection, training and planting of Aryans to form a class of their own. The Aryans settled in the region between the Himalayas and the Vindhya. The Aryans spread their territory east down the Ganges and settled in the Aryavarta. Vedas and Upanishads are considered to be an integral part of Hinduism. It is not possible in this space to discuss and establish the ideas and ideology of any religion, nevertheless that of Hinduism. However, the crux can be summarized in the form of the practice of Vedas and Upanishads with the tool of yoga and understanding the concept of Trimurti- Brahma, Vishnu and Siva. The smaller ceremonies and festivals move into yoga and spiritual rituals, which amount to the practice of religion, which again is scattered among different sects and also differs region-wise. Trimurti(sat-chit-ananda) is the concrete aspect of the manifestation of God. Descending from Trimurti are the five great elements Each of these is the form aspect of a mighty intelligence. The relationship of men with Trimurti is set in order with rites, ceremonies and religious duties, which are interconnected at each stage. The essence of Hinduism lies in love and the stimulation of devotion to bring about worship. It is an attitude, a way of life in which the soul is considered more important than the intellectual form in which the worship is covered. Through liberation, one would achieve moksha and join and merge with sat-chit-ananda.

Manusmriti

The laws of Manu, often inferred as a compilation of law and morals of a very long period. The text itself is divided into twelve chapters. Manusmriti could be seen as the first work which used verses and numbered them to separate subjects. The impetus of manusmriti was to declare the sacred laws of the four chief varnas and the other intermediate ones. Chapter 1 deals with creation in general and the declaration of the laws. The idea of placing Brahmin as a superhuman being can be seen from the very beginning of manusmriti. The Brahmanas were assigned to teach and study the Vedas, and Kshatriyas were commanded to protect the people, bestow gifts, offer sacrifices, study the Veda and abstain from sensual pleasures. The Vaisyas were to tend cattle, bestow gifts, offer sacrifices, trade, lend money, cultivate and study the Vedas. The Sudras were to serve the other three castes. The moral obligation of obeying the sacred laws is well laid out in the text. Those who defy the Veda, the sacred tradition, the customs and act for one's pleasure are cast out as an atheist and a scorner of the Vedas.

Manusmriti attributes the entire Vedas as the first source of the sacred law. Tradition, the virtuous conduct of those who studied Vedas and the custom of holy men were also sources of law. The benefit of obeying the law prescribed in the Vedas was fame in this world as well as unsurpassable bliss after death. Sruti and Smritis shall not be called into question in any manner. When there is a conflict between the two, both are equally held to be valid. Holy rites are prescribed by the Vedas to be performed by Brahmanas, Kshatriyas and Vyshyas. The second Chapter primarily deals with the code of conduct of persons, focusing on the initiation to Vedas and their rituals. The initiation to Vedas must take place in the fifth year after conception for Brahmanas, in the sixth year for Kshatriyas and in the eighth year for the Vaisyas. The initiation, if not properly received by any person, becomes an outcast and is despised by the Aryans. Brahmanas are prohibited from having any relation with such persons. Initiated persons should beg food for his mother or of his sister or of some female who shall not disgrace him. Manusmriti prescribes the rules of conduct for a righteous living. The teachings of Vedas are strictly prohibited to anyone who is not meritorious. The third Chapter details the order of householders and their duties. Marriage with different castes is prohibited, and if twice-born men marry wives from low caste, they will degrade their families and children to the State of Sudras. There is no ritual through which expiation can be sought in an inter-caste marriage. Women are considered lesser humans and are often equated with animals. This irreverence to women can be seen throughout manusmriti. Great values are attached to the righteousness attached to actions. The righteousness of actions is attributed to attaining spiritual merit, the reward for life after death. Chapter Five also deals with the conduct of twice-born men and what is

acceptable standards of living a virtuous life. The rules for eating and avoiding meat are well laid down in the Chapter. The duties of women are prescribed in this Chapter.

Chapter six deals with life after household order. Chapter Seven primarily deals with the duties of the King. King is given the power to enforce the law and inflict punishment. The King, after having fully considered the nature of the offence as well as the strength of the offender, should justly inflict punishment. Manusmriti equates punishment with law. The need for punishment is spelt out in this Chapter as the consequences for the lack of punishment. The whole world is kept in order by punishment. To inflict punishment, the King should strenuously exert himself to conquer his senses and thus shun love of pleasure and perform his duty. The King is to decide the cases which fall under the titles of the law drawn from local usage and institutes of sacred law. The King will try all the causes before him, decide on the cases, and prescribe punishments. Manusmriti attributes the King to discovering the internal disposition of men by their voice, colour, motions, aspect, eyes and gestures. The King is to infer from the facts as to decide justice.

As a general inference on punishments, the punishments are generally not meted out to the Brahmans and the Kshatriyas. Even if punishments are meted out, they are like guilt, remorse or fine. There is always a remedy for the wrong committed by the twice-born men. However, in the case of Sudras and the outcastes and untouchables, the punishments are severe and often end up with capital punishment along with torture. Perjury is punished with fines. . The physical punishments meted out to the three lower castes are to be inflicted upon the belly, tongue, hands, two feet, eyes, nose, ears and the whole body. The order of punishment is first through warning, then with a fine and after that by corporal chastisement. A Sudra who insults a twice-born man with gross invective shall have his tongue cut out. for using harsh language in mentioning the names and castes of twice-born, an iron nail, ten fingers long, shall be thrust red hot into the mouth of the offender. If he arrogantly teaches the Brahmanas their duty, the King shall cause hot oil to be poured into his mouth and ears.

The punishments for Sudra can be seen as more brutal and corporal, whereas the punishments for the twice-born men are generally confined to fines. The punishments for negligence can be seen in manusmriti, which is reasonable and in tune with the modern penal provisions. However, it has to be understood that the negligence is attributed to a carriage, the owner of the carriage, and the animal used for running the carriage. The owner, in all probability, is a twice-born man, and the law in manusmriti is biased towards them when it comes to punishment.

Three methods of punishment are mentioned in manusmriti: first by imprisonment, second by putting the offenders in fetters and third by various kinds of corporal punishments. However, for the twice-born men, there are many ways in which the punishments can be expiated. For instance, if the thief runs to the King and confesses, the King can pardon him. In the case of adultery, it is considered as a grave offence which cuts the roots and causes the destruction of everything. Thus if a non-Brahman commits adultery The punishment is death. A man of low caste who makes love to a maiden of the highest caste shall suffer corporal punishment. A Sudra who has intercourse with a woman of a twice-born caste, whether married or unmarried, whether guarded or unguarded, shall be punished by mutilating the part used for the offence and all his property if the woman was unguarded and shall be punished by death if the women were guarded. For crimes relating to adultery as well as for sexual intercourse with women, the least punishments are offered to Brahmans. No greater crime is known or prescribed in manusmriti as slaying a Brahmana, and therefore, the King must not even conceive in his mind the thought of killing a Brahmana. Further, there are several punishments which are associated with the guilt of the offender and, at times, are more severe than the physical punishments given to the offender. For instance, the slayer of a Brahmana, a twice-born man who drinks sura, steals the gold of a Brahmana, violating the Guru's bed, and is considered a man who commits mahapatakas.

Manusmriti and its penology can be seen as a more modern and quite acceptable way of punishment if the caste equation is removed from it and the law given for the Brahmanas is applied equally to all humankind. This, however, is not the case, and the caste equation in manusmriti makes it one of the most inhuman codes which humankind has ever devised or envisaged.

Yajnavalkya Smriti

Yajnavalkya Smriti, although it can be generally attributed to Manu, represents a later stage of Hinduism than those mentioned in Manusmriti. It can be attributed as a predecessor of Kautilya's Arthashastra. Yajnavalkya Smriti can be understood as more liberal than manusmriti, especially regarding the discussions on evidence and relevance of legal documents. It consists of a total of 1010 slokas, which are presented in a clear and concise format. The text of Yajnavalkya smriti is laid out to teach sages who approach Yajnavalkya to learn dharma. The text is full of theories of dharma, of which the theory of vyavahara of criminal law is of seminal importance.

Yajnavalkya Smriti mentions two kinds of punishments: corporal and pecuniary. Corporal punishment begins with the person's imprisonment and ranges up to capital punishment. For pecuniary punishments, fines begin with a Kakini and can extend to take away one's entire property. There are ten types of corporal punishments which can be inflicted on the private parts of the body: the belly, the tongue, the hands, feet, eyes and nose, ears, property and the entire body. The financial punishments consist of inflicting fines and differ in different provinces.

Generally, the punishment starts with warning, reproof, and fine and then moves on to corporal punishments, which can be employed separately or conjointly according to the nature of the crime. The infliction of punishment should be done only according to the nature of the crime committed, and punishment should be meted out to only those who deserve punishment. While prescribing punishment, it has to be taken into consideration as to whether the offence is intentional or unintentional, whether it is the first offence or a repetition.

Kautilyas Arthashastra

An integral and comprehensive part of Arthashastra is dandaniti . Danda has many meanings. , however, in this context, it is given the meaning to cover the coercive power of a state. It means punishment that is just. Kautilyas Arthashastra establishes the hierarchy with the Brahmin at the top and then Kshatriya, Vaishya and Sudra. The Varna system governed all aspects of life and behaviour. The punishment for the same crime or violation of the law was different for different Varnas.

The punishments differed, and the severity increased depending on who had committed the crime. Brahmins were, in general, considered with great reverence in the text. They were appointed as purohitas and ambassadors. They were given land as gifts. Punishments were rarely inflicted on Brahmins; even if inflicted, the text points out that the punishments are less severe. They could travel free, and making them pay was a punishable offence. Kshatriyas were protectors of land and generally those who punished others.

Maintaining the philosophical tradition and Vedas was the primary aim of punishment. The King was given the duty to enforce punishment and maintain order so that the King could preserve the State of affairs as well as acquire new possessions and share the wealth for the improvement of the kingdom. There have been significant improvements when it came to the reasoning of punishments. However, the Varna system prevailed and could be seen to influence the mode and method of punishment in general. For instance, there came a generality of punishments when it comes to divulging a state secret.

Another aspect of the text, unlike the manusmriti, was the introduction of penalties and their classification for administering punishment. Further, the text has given the separate classifications of offences and punishments as an annexe for a better understanding and administration of punishments. These punishments aimed to bring in a balance by being mild and simple. Leniency was shown to those suffering from poverty, illness, thirst and under special circumstances. Punishments, however, varied depending on the Varna system that prevailed in India.

The Epics

The law regarding punishments can be traced to the epics of Ramayana and Mahabharata. However, the authority of these epics and their being practised is still a mystery; it can be inferred that the punishments prescribed were concerned more with dharma and karma or the individual as well as that of the family. The

story of Mahabharata and Ramayana depicts the complex system that governed the society and imposed punishments on individuals who committed crimes.

In Mahabharata, to hear disputes and their resolution, the King establishes a court of justice. The King is an impartial and fair judge who punishes criminals and rewards those who follow the law. Mahabharata discusses crimes which involve theft, treason, and murder and punishments involving fines, imprisonment and capital punishment. Again, Mahabharata can be seen as practising a system of penology based on the prevailing Varna system. The higher caste received fewer punishments, whereas the Brahmins, especially the Sudras, were severely punished.

Ramayana also depicted a system of criminal law that imposed severe punishments. The epic depicts how the King and punishment enforce the law is meted out in the court. The Ramayana discusses crimes such as theft, murder and treason and prescribes punishments in the form of fines, imprisonment and capital punishment. The principles which described punishments were based on Dharma and Artha. The serious crimes and their punishments were carried out in public to serve as a deterrent for others.

The criminal law and its implications, especially with regard to punishments, can be seen as reflected in the epics, where moral principles and practical measures were used to punish wrongdoers and protect the people. The punishment was meted out to enforce law and order and varied when it came to infliction of punishment. The Varna system prevailed, and often, the laws were not known to them, and the ruling class and the priests and scholars who knew the law influenced the decision-making process.

Punishments in Buddhism, Jainism and Sikhism

Jainism

The Varna system, which gave predominance to the socio-political as well as the economic aspects of the society, was challenged with the coming of Jainism as a religion based on peace. Jainism envisaged peace between man and man, peace between man and animal, peace everywhere and in all things. The Varna system, recognized by Jainism, can now be composed mainly of Vaishyas. Jainism was reinvented by perfected men called Tirthankaras, and there were twenty-four. These men are those who have perfected his self by conquering their lower nature and reaching divinity. The Jainas are divided into two great sects. The principle aspect of Jainist religious teaching depends on four causes, namely right knowledge, faith, conduct and austerities. Right conduct is divided into two, Svarga and Vitaraga. The Jainas are divided into two great bodies, Shravaka and Yati. The right conduct for Yati is to take the vow of brahmacharya and practice absolute celibacy, whereas Shavaka can enter into Grhastha but practice temperance and proper virtue in life. The other good conduct includes the vow of ahimsa, harmlessness, truthfulness, asteya, brahmacharya and aparigraha. When the ascetic has reached a stage where he can make no further progress, he is to put the body aside and pass out of the world by death by voluntary starvation. The penal aspect of Jainism can be reduced to moral abbreviations of sin and its consequences to be suffered physically. The physical punishments are self-inflationary, and one has to have moral guilt to encounter the punishments.

Buddhism

Buddhism can be attributed to Hinduism, which is more practical and carries within itself the spirit of Hinduism modified and blended into the teachings of the religion. The founding stones of Buddhism were laid down by Siddhartha at Varanasi, who was influenced and reflected by the sufferings of human beings who left his palace and went forth alone, homeless, to seek the cause of human sorrow and for its cure. After practising and learning from great sages ascetics, philosophy and metaphysics and practising penances, he reached Gaya and sat down the sacred asvatha tree, declaring that he would never rise from his seat until the light had dawned upon his spirit and the secret of sorrow was found. Buddhahood was achieved, and enlightenment showed him the cause of sorrow and its cure and the path to go beyond sorrow. The extinction of desires is the secret of Buddha to achieve peace and lead a calm life in a world full of sorrow. Buddha went to the sacred city of Kasi and in the deer park of the city of Varanasi, He set the wheel of Dhamma to roll. He spoke of the eightfold noble path to five ascetics. The eightfold path is the fourth noble Truth. The Four Noble Truths was set within the supreme wheel of the empire of Truth, and the wheel of Dhamma was set to roll. Buddha's Teachings

broke the theology of Vedas and the supremacy of the Brahmanas. Buddha spoke in a language which the layman understood. The first commitment to Buddhism is an unquenchable commitment to non-violence. It is a commitment not to harm any sentient being intentionally. Punishments are incompatible with the precepts of Buddhism, and therefore, it is the realization of oneself and practising the noble middle path that is important in Buddhism.

Sikhism

Sikhism grew amid Hinduism and Guru Nanak's idea of joining the Hindus and Muslims in one league of love for God and the service of humankind. The idea of love to God and also to the Guru is the very basis of Sikhism. Sikhism is a Journey reverently followed by ten Gurus, one after the other, in unbroken succession. The tenth Guru is detrimental to shaping the Sikh religion and makes the Sikhs a great militant organization. Guru Govind, after retiring in solitude for almost twenty years, primarily due to the assassination attacks on him by Aurangzeb and the murals, comes out to do a mighty work to separate the Sikhs from all possibility of confusion with the men of other faiths. He calls around five devoted disciples and institutes the ceremony of Pahul, the initiation of a warrior. He proclaims them as Khalsa, the pure, and adds Singh to their name. Thus, every Sikh person must carry on his special signs. Sikhism gave a new identity to the Varna-divided Hindus and a new and more refined religious movement for the followers of Islam.

The Advent of Christianity and Its Religious Implications for Punishments in India

The advent of Christianity to India can be attributed to the arrival of the original apostles of Jesus, especially St. Thomas who visited India in A.D. 56. The apostles of Jesus converted a large number of Hindus. Christianity, with its practice and approach, has greatly influenced the punishment and the method of inflicting it in India. The influence of Christianity can be seen from its inception to the modern day, reflected through the Indian Penal Code, which had elements of Victorian morality and those of modern penology. Christianity as a religion claims to be the sole revelation and permits no rivals and classifies all other religions as mistaken faith. It is necessary for our understanding that the religion of Christianity has to be viewed with empathy to understand its tenets and teachings, keeping aside the militant aspect of religion. Christianity can be understood from a collection of certain canonical books classed together under the names of the Old and New Testaments, which can be collectively referred to as the Bible. The old testaments are exceedingly militant in their character and cannot be considered moral by modern standards. The New Testament consists of four gospels containing the life of the founder of the relation. Outside these canonical books, there lies a mass of documents called apocryphal scriptures. In Christianity, apart from these documents, an immense amount of oral tradition was handed down from mouth to mouth and not committed to writing.

The Advent of Islam and its Theories of Punishments

The main religion after the various branches of Hinduism in India is Islam. It came to Indian soil through Arab settlers, who came for trade and settled on the western coast of Malabar. However, the descendants of these settlers are Indianised and speak the same language as their Hindu brothers and sisters. Forced conversion to Islam has destroyed the religious and cultural identity of those converted in Europe and other parts of the world; however, in India, devout Muslims, even though they practised the religion of Islam, retained their cultural identity. Until statutory law intervened, the Muslims in India were largely governed by Hindu law in matters of inheritance and succession.

The beginnings of Islam can be attributed to Mohammed and his life. After marrying Khadija, Mohammed dedicates to serving the poor and distressed. Mohammed came to be known as Al Amin, the trustworthy among his neighbours, and his noble deeds, often being gentle and helpful, have brought joy to the people around him. His spiritual quest often drove him to the neighbouring desert, where he wrestled with his soul, month after month, through a period of fifteen years in solitude, in meditation and with self-doubt and self-questioning. After a long period of fifteen years, a light shines around him, and a glorious form stands before him, asking him to go forth and do the work that lies before him. He reaches home and finds his wife, Khadija, whom he makes his first disciple. Mohammed became the Prophet of Arabia, turning Arabia into a settled state. The religion of Islam was founded, which could carry the torch of science and re-light it in Europe and other parts

of the world. The devotion to the founder moves the people of Islam, second to that felt in no other faith. The Prophet made his relatives his disciples, and within three years, the disciples grew to thirty. The Prophet gained the trust of people by preaching against human sacrifice, lust and drunkenness. Prophet Mohammed had to face fierce persecution and torture from the Prophet and his followers. The Prophet flees to Madina from Mecca to prevent assassination by his enemies. The battle of Badr takes place, and the Prophet wins the battle and is seen by all men as the Prophet of the Lord.

The penal system in Islam

The Islamic criminal justice system describes three different kinds of criminal offences. The first is hudud, which refers to specified crimes and punishments, and the second is qisas, which describes how crimes and punishments are retaliated against. The last category, tazir, refers to offences that deter but do not fall under the purview of hudud or qisas categories. Also, a few passages in the Quran discuss the pre-Islamic legal system, which was predicated on the ideas of “eye for eye,” “nose for nose,” and “self for self.” Only five crimes—murder, theft, highway robbery, adultery, and false accusations—have explicit punishments mentioned in the Quran.

Hudud Crimes

The concept of hudud offences is explained in both the Quran and hadiths. It is regarded as a crime against God, and the Quran itself clearly describes how it is punished. The enforcement and imposition of legal action and punishments for hudud offences are mandatory. Human legislatures cannot alter or amend these crimes, nor do they have the power to intervene in hudud proceedings.

There are seven hudud crimes are recognized under Islamic law. These are the following: apostasy (Ridda), adultery (Zina), slander (Qadhf), theft (Sariqa), political rebellion (Baghi), highway robbery (Haraba), and alcohol consumption (Shorb al-Khamr).

Ridda (Apostasy)

The Quran and the Hadith explain the offence of ridda, but its punishment is rooted in hadith only. Most Islamic jurists approve that the death penalty is the punishment for ridda. The offence of ridda is specified in the Quran as follows: “And whoever of you reverts from his religion [to disbelief] and dies while he is a disbeliever - for those, their deeds have become worthless in this world and the Hereafter, and those are the companions of the Fire; they will abide therein eternally.”

This crime has been the subject of a great deal of controversy and long debate among Muslim scholars. Some scholars consider it the contemporary substitute for high treason, suggesting that issues related to one’s religion are not grounds for prosecution. Others interpret it as a complete rejection of Islam, which indicates that such a person becomes a threat to Muslim society. Although blasphemy is typically considered a tazir, some jurists also include it in the definition of ridda.

Zina (Adultery)

Zina is the term used to describe the willful having of sexual relations between a man and a woman who are not legally married. The Quran provides a clear explanation of the punishment for adultery or fornication. Men and women alike are subject to a hundred lashes if they commit rajm, which is an adulterous act (zina) committed by married individuals. However, the Quran does not specify the offence of rajm. Many hadiths describe the severe penalties imposed when a married person commits zina. One year of exile and one hundred lashes are the penalties for an unmarried person found guilty of fornication. It is one hundred lashes and death by stoning for married adulterers.

In most rulings, Islamic courts intervened and declared that the hadith could not supersede the explicit and unambiguous injunctions in the Quran and that the punishments for rajm were not based on those injunctions. For this reason, the only punishment that may be imposed on anyone found guilty of zina—married or single—is a hundred public flogging.

Qadhf (Slander)

Based on the Quran, the fiqh discusses the ḥadd offence of qadhf. As stated in the hadiths, slander is punished by whipping with eighty stripes. In this context, false charges of adultery, sexual misconduct, or defamation of a married Muslim woman are referred to as qadhf, or slander. The punishment may be lowered to tazir if the offender is physically or mentally incapable.

Sariqa (Theft)

The theft is a hudud crime, explicitly stated in the Quran. “As to the thief, male or female, cut off his or her hands, a punishment by way of example, from God for their crime”. The condition that the penalty not be applied in situations involving uncertainty is an essential one for evidence. If the judge determines that tazir (explained below) is suitable, the thief may be punished. This is similar to sentencing someone of a less severe crime due to insufficient evidence of a more serious one, but it is allowed under tazir.

Haraba (Highway Robbery)

The offence of haraba is referred to in the Quran as follows: “The punishment of those who wage war against God and his Apostle, and strive with might and main for mischief through the Land is execution, or crucifixion, or the cutting off of hands and feet from opposite sides or exile from the Land”. This crime is making a serious impact on public security because it is usually committed by two or more persons, thus becoming a more dangerous form of group criminality.

Baghi (Rebellion)

According to Islamic law, baghy is considered a punishable offence, and that differs from haraba. Muslim jurists generally use the word “baghy” to refer to political resistance or acts of revolt. It is defined in the Quran as follows: “And if two factions among the believers should fight, then make settlement between the two. But if one of them oppresses the other, then fight against the one that oppresses until it returns to the ordinance of Allah. And if it returns, then make a settlement between them in justice and act justly. Indeed, Allah loves those who act justly.” This implies that the ruler must avoid violence before resorting to war; war should only be used as a last resort after every other means of peace has been closed. The punishment for the offence of baghi is the death sentence, explained under the Sunna.

Shorb al-Khamr (Drinking Alcohol)

Since Arabian Peninsula Arabs widely consumed drinking date alcohol at the time of the revelation of Islam, a comprehensive ban was implemented gradually rather than all at once. The first revelation concerning drinking wine and gambling is explained in the Quran, Surah Al Baqarah 2: 219. At a later time, several verses in the Quran classified drinking wine as a serious offence. According to the Hadith, it is mentioned that individuals who use wine should be subjected to corporal punishment.

Qisas

The qisas crimes include Murder, Voluntary homicide (manslaughter), Involuntary homicide (manslaughter), Intentional crimes against the person and Unintentional crimes against the person. These crimes are defined both in the Quran and the Sunna. The Quran does not provide a clear and mandatory criminal definition or punishment for Qisas, the second category of offences. According to Islamic law, Qisas refers to equal retaliation for any action against an Individual’s body. Kamali says that qisas prescribes that the punishment imposed on the offender be the same, proportionate, and, if possible, the same means that the criminal used to kill or injure his victim. Murder, voluntary (manslaughter), involuntary (manslaughter), purposeful (crimes against people), and unintentional (crimes against people) is among the crimes classified as qisas. Both the Quran and the Sunna provide definitions for these offences.

The visas establish two categories of sanctions. One is the talion principle, which entails inflicting bodily injury or equivalent measures against the offender. This concept was used in the early Islamic period to maintain social order. The second is diya, which refers to the offender receiving the equivalent treatment. It is an

alternate form of relief wherein the sufferer or his family receives diya, or compensation, from the perpetrator or his family. Concerning the choice between retaliation and diya, the Quran makes it apparent that the former is preferable, and forgiveness is the better option over both.

Murder

In Islam, causing bloodshed is considered a grave sin and killing one person is equal to killing everyone. As per Islamic notion, murder is considered an offence against the society. All human beings are brothers, and all are the children of Adam, and it places infinite value upon human life. It explicitly states that life is sacred and no one can take the life of any human being without a just cause. Homicide is classified into three categories under Islamic Law, a murder which is punishable by retaliation (qisas). Homicide by mistake is punishable by payment of blood money (diya) to the heirs of the deceased plus an expiation (kaffarah) that consists of a charity to the poor or atonement by fasting, and culpable homicide is punishable by payment of blood money (diya). Many other verses also stressed that murder is a heinous crime and should be given stringent punishments to murderers. However, there are provisions in the Quran concerning other penalties for the crimes of qisas. Exile, being barred from inheriting, and being denied the ability to distribute one's property by testamentary disposition are a few examples of these.

Tazir

Offences classified as 'tazir' are those that fall outside of the two categories mentioned above. They are less severe, including crimes under the Hudud and Qisas categories, less severe penalties for hadd and Qisas charges where the judge determines individual or social harm and regulatory offences where there is public or individual harm. The prescribed penalty for their crimes is not stated in the Quran or the Sunnah. Tazir offences, or discretionary offences, are based on ijihad. Since there are no explicit penalties for their crimes in religious texts, judges are free to use their discretion and consider the circumstances and gravity of the offence. When deciding punishments, the judge considers the proportionality principle, individual circumstances, and societal norms. For crimes like slander or public obscenity, tazir punishments can involve corporal punishment, fines, incarceration, or public censure. The penalty is intended to be corrective.

Islamic Penal System in India

Islamic Jurisprudence elaborates on the broad rules provided by Sharia on many different matters like civil, criminal and family. Islamic Penal system was practised in India during the time of Moghul period. All these three categories of crimes and punishment were imposed in India during the period of the Mughals. Although the Mughal Empire did contain some aspects of Islamic criminal law, it did not implement all of the hudud, or Islamic spectrum of punishments, present in other Islamic legal systems. As an alternative, the empire established its penal code that combined aspects of local and customary law with Islamic law. The execution methods that could result in death are hanging, beheading, and impaling. Additional penalties were mutilation, flogging, exile, imprisonment, fines, seizures, forfeiture of rank and title, court bans and dismissal.

Social trends are mirrored in civil laws and criminal codes in India. During the British period, the rules and codes adapt to societal changes. The Cornwallis Code of 1793 introduced many changes and reforms in the Criminal justice system in India. In 1833, Lord Macaulay moved the House of Commons to codify Criminal law in India. Several improvements and modifications were made to India's criminal justice system by the Cornwallis Code of 1793. The First Law Commission appointed Lord Macaulay as a chairman to codify Indian criminal law as a whole in 1833. Later, the enactment of the Indian Penal Code of 1860 repealed the existing criminal laws of both Islam and Hinduism. Unfortunately, the civil laws relating to personal matters in India are not codified till today.

CONCLUSION

The modern provisions of punishments in India is through various criminal legislations, of which The Indian Penal Code is the seminal statute. However, the Constitution of India places limitations on the ability of the State to inflict punishments. This is envisaged through constitutional precepts and values and judicial decision-

making. The Constitutional values and Judicial interpretation of the delivery of the criminal justice system bring in different aspects of limitations imposed in criminal justice and its administration.

Part III of the Constitution of India provides for religious freedom and the legal assimilation of all religions for its free practice and propagation. The Constitution encompasses the rule of law regardless of religion and outrightly prohibits discrimination based on religion. There may be laws in India which could not be equated with the international standards of freedom of religion or belief. However, this is justified as India is a nation with a long history of accommodation and also a nation which is plural and multicultural to its core. Thus, constitutional adjustments concerning the accommodation of pluralistic values have to be made. The various personal laws and religious values and practices and their practice has to be seen in this light. The Constitution limits the impact of religious values on the citizens and persons within India. This limitation is relatively close as the variety of cultures and practices of different religions had to be accommodated within the constitutional framework.

The penal provisions, however, are not to be seen from the framework of religious values mentioned in this article, but from modern constitutional values and scientific methods for punishments. The religious impetus in punishments may be applicable in certain circumstances, but in general, the application of penal methods, as discussed throughout this paper, could bring in countless injustices to the offender and could be detrimental to the criminal justice system. The idea of punishment to be inflicted and proceeded only from a public authority and not by any other authority is the cardinal rule in understanding the modern penology and its practice. The idea that punishments must not be the consequence of some supernatural process, but should be rooted in the work of human agencies which are polished through constitutional values and judicial process. The determination of punishment must be based on positive legal aspects of punishments rooted in scientific reasoning and not through the theological and religious inferences. The tracing of religious values through the religious texts and its practice gives us enough and more evidence as to the necessity of incorporating positive scientific methodology in inflicting punishments.

REFERENCES

BOOKS

ANNIE BESANT, HINDUISM (1982).

Hobbes, Leviathan

Shlomo Biderman & Asa Kasher, Religious Concepts of Punishment and Reward, 44 PHILOSOPHY AND PHENOMENOLOGICAL RESEARCH (1984).

A CULTURAL HISTORY OF INDIA (Arthur L. Basham ed., 12. impr ed. 2008).

MANU, PATRICK OLIVELLE & SUMAN OLIVELLE, MANU'S CODE OF LAW: A CRITICAL EDITION AND TRANSLATION OF THE MANAVA-DHARMASASTRA (2005).

I SRISA CHANDRA VIDYARNAVA, YAJNAVALKYA SMRITI (First ed. 1918).

LEGAL AND CONSTITUTIONAL HISTORY OF INDIA'S ANCIENT LEGAL, JUDICIAL AND CONSTITUTIONAL SYSTEM (Reprint ed. 2007).

L.N. RANGARAJAN, KAUTILAYA THE ARTHASHASTRA (1987).

COMPLETE MAHABHARATA: ADI PARVA, (2010).

See, VĀLMĪKI, ARSHIA SATTAR & VĀLMĪKI, THE RAMAYANA (2000).

ANNIE BESANT, THE RELIGIOUS PROBLEM IN INDIA (Second ed. 1909).

ANNIE BESANT, BUDDHISM 10 (3. ed ed. 2005).

ANNIE BESANT, SIKHISM 6 (3. ed ed. 2005).

VICKI C. JACKSON & MARK V. TUSHNET, COMPARATIVE CONSTITUTIONAL LAW 1060 (1999).

ANNIE BESANT, CHRISTIANITY 5 (3. ed ed. 2005).

SYED AMEER ALI, SPIRIT OF ISLAM: A HISTORY OF THE EVOLUTION AND IDEALS OF ISLAM WITH A LIFE OF THE PROPHET.2010).

MOHAMMAD HASHIM KAMALI, CRIME AND PUNISHMENT IN ISLAMIC LAW: A FRESH INTERPRETATION 17 (2019).

The Quran

MOHAMMAD HASHIM KAMALI, SHARI'AH LAW: AN INTRODUCTION

DAVID PEARL & WERNER MENSKI, MUSLIM FAMILY LAW (3. ed. 1998).

C. G. WEERAMANTRY, ISLAMIC JURISPRUDENCE: AN INTERNATIONAL PERSPECTIVE (Reprint of 1988 ed. 1994).

RecepÇiğdem, The Concept of Ta'zir (Discretionary Punishment) in Theory And Practice, (2004).

S. P. Sangar, Administration of Justice in Mughal India, PROCEEDINGS OF THE INDIAN HISTORY CONGRESS (1964).

JOURNALS

Mohamed A. Arafa, Islamic Criminal Law: The Divine Criminal Justice System between Lacuna and Possible Routes, JOURNAL OF FORENSIC AND CRIME STUDIES (Spring 2018)

M. Cherif Bassiouni, Crimes and the Criminal Process, ARAB LAW QUARTERLY (1997).

Ibrahim Adewumi Adeyemi, Comparative Analysis of Capital Punishment in the Hadd Offence of Riddah Vis-a-Vis the Offence of Espionage, SSRN JOURNAL,(2018)

M. M. Slaughter, The Salman Rushdie Affair: Apostasy, Honor, and Freedom of Speech, VIRGINIA LAW REVIEW (1993).

Mohd Farid bin Mohd Sharif, Baghy in Islamic Law and the Thinking of Ibn Taymiyya, ARAB LAW QUARTERLY (2006).

Ebrahim Ghodsi, Murder in the Criminal Law of Iran and Islam, THE JOURNAL OF CRIMINAL LAW 160 (2004).

Raeesa Vakil, Constitutionalizing Administrative Law in the Indian Supreme Court: Natural Justice and Fundamental Rights, INTERNATIONAL JOURNAL OF CONSTITUTIONAL LAW (2018).