

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 2

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

Study on Ancient Criminal Justice System of Ancient, Medieval and British India

MANISH SINGH TANWAR¹

ABSTRACT

This research paper consists of three parts which analyse torture and Inhuman punishments which were prevalent during the three important phases of history of India namely Ancient period, Medieval period and British period. In 1855, the Madras Torture Commission Report was the first government-backed study on police torture in modern India. It was revealed that torture and coercion were not new innovations brought about by British rule but have a long history and predate colonization. Considering the recommendations in the report, the confession under police custody was not admissible as evidence in accordance with Code of Criminal Procedure, 1898, and Indian Evidence Act, 1872. It has been since the last quarter of the twentieth century that this safeguard has been incorporated into these penal laws, In fact, it has failed to provide a complete solution, and custodial violence or torture has remained an integral part of police operations. British officials were concerned with the mutilation and other inhumane punishments being practiced in India in the name of enlightenment and civilization. In this paper, we argue that British colonial torture in India was different from that in other parts of the world. As a result, it took place outside the public eye, in the context of police operations, prison discipline, life sentences, and arbitrary executions. For writing this present research paper, descriptive and analytical methods with doctrinal mode have been adopted. This research paper has taken into account Indian books, laws, reports, journals.

Keywords: Punishment, Torture, Police, India

I. CORPORATE CRIMINAL JUSTICE SYSTEM IN PAST

The ancient chants and mantras known as the Vedas served as the foundation for the law in India, which was primarily a Hindu country. The four Vedas—Rig Veda, Atharva Veda, Yajur Veda, and Sama Veda—are the four main sacred texts of Hinduism. Rig Veda is known as the science of praises, Atharva Veda as the knowledge of sorcery, Yajur Veda as the science of offerings, Sama Veda (the science of melodies). The heterogeneity of the Vedas, both in terms of design and content, indicates that they were produced at various times, with a significant gap between them. Of the important sources for compiling Dharmashastra is the literature legacies

¹ Author is an Advocate, pursuing LL.M. from Amity University Rajasthan, India.

of the Vedas. The Dharmashastra are historic Sanskrit writings that outline the Dharma. These are, in essence, "rules of behavior for men," or a list of safety tips. Manu is regarded as the greatest of the Dharmashastra's authors, and his law is more respected than any other. Manu mentions four different types of punishments: Warning (Vak-danda), Condemnation (Dhik-danda), monetary punishment (Dhana-danda), such as a fine or asset confiscation, and Badhadanda (all sorts of physical punishments which also includes death). The researchers suggested a variety of physical penalties known as "Badhadanda," including beatings, limb amputations, branding—which involves leaving markings on the accused's body to show that he or she has been found guilty—the death penalty, and pouring hot oil into the accused's ear. Rama Parsad claims that the Jus talion, which is so frequently depicted in ancient laws, stands out particularly in these penalties. Three factors—trial by ordeal, the danda, and the caste structure—determined the method of punitive action in past.

II. TRIAL BY ORDEAL

Unfortunately, almost little is known about the process used to decide cases in the courts, But numerous ancient historians agree that the use of trials by ordeal was common in past. The Atharva Veda and the Upanishads are just two of the earliest Indian legal works that mention ordeals as a component of Indian law. Manu's rules call for a variety of trials by ordeal, particularly when evidence wasn't present or wasn't thought to be trustworthy. In a community where religion served as a powerful unifying factor, the faith in ordeals does not appear inconsistent. Given the significance of both water and fire in Hinduism, trial by fire and water was commonly used among other methods to demonstrate the guilt of the accused. Agni (fire) was thought that one of the gods, had purifying properties. The defendant was "forced to pluck a penny out of a boiling saucepan of liquid or use his tongue to taste a red-hot plough piece". In another situation, "In order to prove his innocence, an accused was needed to hold a red-hot iron covered in a leaf in his palm, If his wrists do not burn, the defendant is not guilty". Water was crucial during trials as well. If an alleged offender were innocent, they would not drown when they were frequently thrown into the water. In certain instances, the defendant was made to consume a poisonous beverage (Vish). If he admitted the truth, it was thought that the beverage wouldn't hurt him. Greek historian Ktesias describes a more severe form of ordeal in the 5th century BC. He talks of a spring whose water, according to him, thickens like cheese. When someone drinks, they become crazy and admit all they've done.

III. THE NOTION OF DAND

Dand served as a crucial tool to deter crime and impose harsh penalties. The religious literature

argues that punishment is the sole means by which the entire human species is kept in check and that punishment is the only means by which a man may be managed to keep purified and virtuous. Danda can be characterized as military force, compulsion, and harsh punishment depending on the circumstances. The whip of punishment, known as dand, is used to bring this society to justice; for this reason, "the science of monarchy is called dandniti (the administration of power)". According to Manu, the god similarly formed dand in order to strengthen the "might of the king" and make him efficient in defending the people. Law is nothing more than dand. Manu's rules, Kautilya's Arthashastra, and the Mahabharata all stipulate that the King should use dand with the utmost judgement to uphold justice. Among the main characteristics of sovereignty according to Indian law, one was the ability to administer justice and impose punishment. The King served as the State's main judge as well.

IV. TORTURE RELATED TO ASSASSINATION TACTICS:

A sentence of death can be carried out in a number of ways. Jolly, a specialist of Sanskrit, states that for relatively minor offences, "death penalty in different extreme forms, such as impaling on a stake, crushing to execution by an elephant, burning, boiling, chopping to pieces, and genital mutilation, were also regularly given." Manu describes the additional ways of execution, including (a) having the culprit burned alive, (b) putting a hot iron in their mouth, and (c) having wild dogs eat the culprit.

V. BARBARIC PUNISHMENTS IN MEDIEVAL PERIOD OF INDIA

Several Muslim empires controlled the India during the Middle Ages. In general, scholars divide the time into the Sultan of Delhi's reign and the Mughal Empire. In the 13th century, Muslim dominance in India was increasingly influential and prospered until the start of the 18th century. Indian culture underwent a revival during the Sultanate of Delhi. Despite their assertions, Muslim monarchs imposed punishments in accordance with their own wishes despite claiming to uphold Islamic values of justice and fairness. In reality, periodic spikes in crime like robberies and murders, together with the ensuing unrest among the populace, tended to make mediaeval kings more nervous and led them in "many cases to impose punishments entirely contrary to the spirit of the Sharia." The common method of death penalty was that offenders were frequently put to death by being crushed under the hooves of elephants. The emperor jahangir enjoyed watching elephants trample condemned captives to death. "The elephant will break his bones by stages, as men are broken upon the wheels, as first his leg, then his knees, after that bones in his both hands," Terry recalls of the horrifying spectacle of being tramped by elephants. The records of European travellers show that several Muslim kings were known for using

heinous means of death. A dacoit who had seven prior convictions was torn apart limb by limb till he perished under Jahangir's rule. According to Terry, among many other punishments, criminals were killed via snake stings. According to Manucci, Emperor Shahjan used to deploy deadly snakes to penalize "any officer who was unable to dispense justice." The dishonest Kotwal was to be bit by a cobra in front of Shahjahan, who then commanded that the corpse should remain ahead of his courtroom for 2 days. A individual could be executed by being thrown from the rooftop. The killings were once carried out publicly as a deterrent. People who were found guilty and sentenced to death during Muhmmad Bin Tughliq's rule were put to death just outside of the court's front gate, "where their corpses remained open for 3 days and their family were forbidden from giving a suitable funeral."

VI. DURING THE BRITISH PERIOD

Bengal, that has been in illegitimate British administration since 1757, received recognition from the Mughal King to form British government in Bengal in 1765. The East India Company had constructed factories in jurisdiction of Bengal, Bihar, and Orissa under the terms of a licence issued by British Crown in 1726. The practice of torturing was gradually eliminated from European criminal laws starting in 1750. The Britishers raised worry over the amputation punishment's brutal nature. According to the actions taken by the Governor General, the penalty of amputation was changed to a harsh prison sentence. According to some researchers, the Europeans' ambition to enforce what they perceived as civilised ideals of fairness and morality on a number of residents, or the need to produce new human beings, was what actually drove them in their efforts to end such "cruel acts." Thomas Metcalf (1994, p. 17) claims that by the late 19th century, the concepts of "progress" and "social order" had already become the main justifications for British control. The House of Lords was shocked by accusations of mistreatment made against the East India Company. The Company was charged by Mr. Danny, MP, of humiliating and pressurising to extract ten pounds from a person who only owned eight. The Madras Government created 3 member Commission to undertake the most thorough and exhaustive inquiry in 1855 as a result of the allegations in Parliament and the newspaper attention that proceeded. The Commission's first charge is just to investigate "the application of cruelty by the local govt. servants for the goal of realising the Government income." The investigation's focus eventually expanded, meanwhile, to cover the application of abuse & mistreatment to coerce admissions in police investigations. The officers of commission heard numerous charges from citizens who came from all across the world throughout its eight tenure. The Commission's conclusions confirm that the use of coercion by the State and Tax officials was an indisputable fact. Quoting "ancient references," it took mention of the "actual history"

that prior to the arrival of colonisers, "cruelty was a recognised way of gaining both income and admissions."

VII. ILL-TREATMENT RELATED TO PENALTIES:

In order to strengthen the rule of law in a multicultural community, the Britishers introduced the IPC, removing outdated systems of subjective power and social inequality. It developed a complete criminal court system, with a hierarchy of courts dispersed throughout a mechanism of appeal, written laws that are applied uniformly across the nation, and the exclusive authority of the state to bring charges and grant pardons. It is commendable that the IPC prohibited inhumane native penalties including amputation, exposing the convicted to be tramped by elephants, and having a felon displayed in open on the back of an ass. Even during British period, flogging and transportation for lifetime were both commonly employed. Whipping was administered in accordance with The Whipping Act of 1864, It is not mentioned in IPC. "Barindra Ghosh and Ullashkar Dutt were found guilty of conspiring to declare war against the Crown and received a death penalty by the District and Session Court of Kolkata in the Alipore Bomb Case". Both were then freed under a full pardon when the Bengal High Court's appeal verdict modified their death penalty to transportation for life. To put it briefly, the Britishers framed the IPC taking in view of the contemporary humanist tradition. However, it was overshadowed by the use of the random capital punishment, flogging, life in jail, solitary confinement, and cage incarceration as punishments to quell the country's freedom movement.

VIII. CONCLUSION

From Indus Valley civilization to medieval India, India has a longstanding tradition of using torturing to coerce admissions and administer extreme penalties. Throughout different eras of past in the India, the concepts of criminal justice and punishment were characterised by criminal punishment, deterrent, and the logic of fear. The adoption of abuse and pressure by the British Empire in India was not a groundbreaking development. The practice has a longstanding tradition, and people like English writers have described how cruelty is frequently employed against political adversaries and the prisoners. The alleged brutality of certain Moghul kings had a tight grip on the psyche of Europeans. The british government utilised deportation for life, branding, and hard labour as methods of punishment as a formula for creating fear. This is a depressing truth that harsh labour and isolation in cells were used to terrorise criminals while imprisoning them served as the primary method of punishment. In order to quell and control the locals of india, flogging and sending criminals offshore for lifetime were imposed as penalties. There isn't any convincing justification for why losing limb was brutal or inhumane than losing

one's freedom or perhaps one's life. Similarly, a civilised and decent judicial system cannot justify the cruel and brutalising penalty of flogging.

IX. REFERENCES

1. Henry Beveridge, *A Comprehensive History of India, Civil, Military, and Social, from the First Landing of the English to the Suppression of the Sepoy Revolt: Including an Outline of the Early History of Hindoostan*, Vol 1 (London: Blackie and Son, 1862), p.19.
2. Tarapada Lahiri, *Crime and Punishment in Ancient India* (New Delhi: Radiant Publishers,1987), p. 1.
3. Graves Champney Haughton & Standish Grove Grady, *Institutes of Hindu Law, or, The Ordinances of Menu, according to the Gloss of Cullúca: Comprising the Indian System of Duties, Religious and Civil* (London: Wm. H. Allen, 1869), p. 164
4. Rama Prasad Das Gupta, *Crime and Punishment in Ancient India* (Calcutta: Book Company, 1930), p. 57.
5. Arthur Llewellyn Basham, *The Wonder That was India: A Survey of the History and Culture of the Indian Sub-continent before the Coming of the Muslims* (New York: Taplinger Publishing Company, 1968), p. 122.
6. Edward C. Sachau, *Al Beruni's India vol.2* (London: Kegan Paul, Trench, Tr bner Co., 1910), pp.158-159 also see Muhammad Bashir Ahmad, *The Administration of Justice in Medieval India* (Aligarh: The Aligarh Historical Research Institute, 1949), p. 59.
7. Johan W. Spellman, *Political Theory of Ancient India: A Study of Kingship from the Earliest Times to Circa A.D.300* (Oxford: Clarendon Press, 1964), p.119.
8. Lionel David Barnett, *Antiquities of India: An Account of the History and Culture of Ancient Hindustan* (London: Philip Lee Warner, 1913), p. 127.
9. Muhammad Bashir Ahmad, *The Administration of Justice in Medieval India* (Aligarh: The Aligarh Historical Research Institute, 1949), p. 60
10. John Watson M' Crindle, *Ancient India: as Described by Ktésias the Knidian* (London: Trubner &Co,1882), pp. 17-18.
11. Manu, Ch. VII, SI.1-13; also see Upendra Nath Ghoshal, *A History of Indian Political Ideas: The Ancient Period and the Period of Transition to the Middle Ages* (Oxford: Oxford University Press,1959), p.43.
12. Julius Jolly, *Crimes and Punishment(Hindus)”, Encyclopedia of Religion and Ethics Vol. IV* (1908), p. 284

13. Saiyid Athar Abbas Rizvi, and Arthur Llewellyn Basham, *The Wonder that was India: A Survey of the History and Culture of the Indian Sub-continent from the Coming of the Muslims to the British Conquest, 1200-1700*. Vol. 2 (London: Sidgwick & Jackson, 1987), p.xvii.
14. Soujan Seth, *Ancient and Early Medieval History of India* (New Delhi: Navyug Publishers and Distributors, 2009), p. 248.
15. Abdul Qadir Al-Badaoni, *untah -ut- aw r vol. ranslated eorge . A. Ranking* (Calcutta: Baptist Mission Press, 1898), p. 239
16. William Foster, *Early Travels in India 1583-1619* (Oxford: Oxford University Press, 1921), pp.305-6
17. Edward Terry, *A Voyage to East-India 1655* (London: J. Wilkie, 1777), pp.355.
18. Niccolao Manucci, *Storia du Mog or Mogul India, 1653-1708*, vol.1, Translated by William Irvine (London: John Murray, 1907), p.197.
19. Vincent Arthur Smith, *The Oxford History of India: from the Earliest Times to the End of 1911* (Oxford: Clarendon Press, 1920), p. 245
20. Satya Prakash Sangar, *Crime and Punishment in Mughal India* (New Delhi: Reliance Publishing House, 1998), p. 38.
21. Ibn Hasan, *Central Structure of the Mughal Empire and Its Practical Working Up to The Year 1657* (Oxford: Oxford University Press, 1936), p. 337.
22. Norman Anderson, *Law Reform in the Muslim World* (London: Athlon Press, 1976), p.20.
23. Douglas M. PEERS, *Torture, the Police and the Colonial State in Madras Presidency, 1816-1855*, (1991) *12 Criminal Justice History*, pp. 29-56p.74.
24. Vide Proceedings of the Governor-General in Council, dated the 10th Oct. 1991, in James Edward Colebrooke, p.159.
25. Talal Asad, „On torture, or cruel, inhuman, and degrading treatment“ (1996) *Social Research* 1081, p.1102.
26. Thomas Metcalf, *Ideologies of the Raj: The New Cambridge History of India* (Cambridge: Cambridge University Press, 1994), p.17
27. Report of the Commissioners for the Investigation of Alleged Cases of Torture in the Madras Presidency (Madras: Printed by H, Smith, at the Fort ST. George Gazette Press, 1855), para.3.

28. East India Police, Report of the Indian Police Commission and Resolution of the Government of India (London: Printed for His Majesty's Stationary Office, 1905), para. 161.
29. Report of the Indian Police Commission and Resolution of the Government of India (London, 1905), para. 23.
30. Douglas M. Peers, „Torture, the Police, and the Colonial State in the Madras Presidency 1815-55“ (1991) 12 *Criminal Justice History* 29, p. 31.
