

# An Overview of the Penal System in Manusmriti

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## ABSTRACT

The penal system is not a modern concept, but it had its roots since society came into existence. Although punishments are different from ancient to modern society, various crimes and offenses were still punishable in the ancient period. Manusmriti is one of the oldest pieces of literatures to give evidence that the penal system was also in existence, and the ruler of that dynasty had to follow the system of Penology.

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## INTRODUCTION

The origin of punishment is as ancient as the origin of the world, the extension of punishment is universal, and there is diversity in its form. The country variable concerning time and circumstance, the protection in hand is called the first law and the principle of natural justice involves punishment, Manu has been named the first law provider in India. It is known that rules, rules, and regulations were made for the conduct, governance, administration, birth, and death. There is a memory of human life methods; under the seventh, eighth, and ninth chapters of Manu, the discussion of behavioral justice, the purpose of punishment, the types of punishment, and the types of crimes have been discussed in detail.

### General Concept of Punishment

Before properly explaining the growing system of man, it is necessary to understand the general concept of punishment that what is dented, when it is done, to whom it is given, how much is given and why it is done whenever social law or rule is done. If the rules made by the organizations are violated, then to control that person or group, to determine the work to be done by him and to deter others from such work, punishments are to be given to make people release and warn that if there is any rule or law breaking then the consequences are borne by them. Punishment always has a purpose and any goal is not achieved by giving unintentional punishment.

### Object of Punishment

The journey of punishment from ancient times to the present day proves that the purpose of punishment also keeps on changing. Punishment is also given to develop and enrich the sense of social security. *Gracious* believed "that punishment is a kind of evil that has to be borne by the person who does evil," while *Jerome Hall* believes "that the punishment involves its pain, suffering, and grief." It contains an element of the negative and moral necessity of correction per run.

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The goal of punishment is not met until the person receiving the punishment realizes his mistake.

### Procedure of Punishment

In Manusmriti Chapter 7 Verse 19, it has been said that whether punishment should be given according to scripture and after due consideration, it should never be given arbitrarily. The punishment given by him destroys wealth in every way.

### Necessity of Punishment

In Manusmriti Chapter 7 Verse No. 20, it has been explained why punishment is necessary. Here it has been told that if the king leaves laziness and does not use punishment among the criminals deserving of punishment, then the strong people will treat weaker people just like they cook some fish by piercing an iron rod, they start treating them just alike, and the situation of jungle Raj arises.

### Fair Use of Punishment

In the seventh chapter of Manusmriti itself, in verse 24, it has been told why punishment should always be used properly; if there is improper use, it will cause harm instead of profit. The person receiving punishment will get it but will not be able to accept it unless there will be no acceptance, and till then, the goal of punishment will not be achieved. So the purpose of punishment has a deep significance, as it is said that punishment should not only have pain but purpose.

### Qualification of Person Authorized to Punish

For the opponent's success, it is also necessary that the punishment be formulated by a person who is intelligent and knowledgeable of religion and meaning, i.e., if the person himself is not an ideal man, then his words will have no effect. The people unfit to use punishment has also been discussed, and it is said that helpless are foolish people and the use of punishment by being attached to scriptures and subjects cannot be justified, i.e., pure truth only about money etc. Punishment can be used only by good helpers and wise ones who behave according to the scriptures, it has also been said in Manusmriti that the whole world is afraid of the cold king, and so the king can control all the people by punishment only.

### Qualification of the Judge (King)

The eighth chapter of the human husband is also important from the point of view of punishment. In the chapter's first verse, it is said that the king who wants to see the case, who is endowed with certain characteristics, talks with the Brahmins and the ministers who know the Panchang combined mantras. Enter the Rajya Sabha or the court without the fickleness of hands, feet, and eyes, etc.

### Types of Crime

There are descriptions of 18 types of crimes in verse number four of Chapter 8 of Manusmriti; they get to know how the nature of criminals was in the society at that time because the concept, nature, and form of crime never remained the same form in the country and society. In such crimes, the girl presenting false evidence has been specially mentioned about the woman's relationship with the man and the man's relationship with the foreign woman and the girl's relationship with the girl, etc. It has been said that it is a law of punishment even on true testimony.

*Dissimilarity in Punishment:* In Manusmriti, there is a system of different punishments for the same type of activities done by the people of the four castes.

*Nature of Punishment:* In Manusmriti, 10 places have been identified for punishment, such as the pain or piercing of these organs is said to be done based on the amount of crime, and such punishment is also called corporal punishment, whose main types include whipping organs includes breaches, etc.

*Innocents Cannot be Punished:* Like modern criminal jurisprudence, the Manusmriti also talks about not punishing the innocent or the punishable person, and it has been clarified that the king punishes the innocent person releases the criminal person, he earns great disgrace.

### Types of Punishment

Under the Manusmriti, four types of punishment have been mentioned for different offenses: *Vak-danda*, *admonition*; *Dhikdanda*, *censure*; *Dhanadanda*, *fine (penalty)*; and *Badhadanda*, *physical punishments*. It has been said in

verse number 130 that even if the offender does not come under control, he should be punished with all four types of punishment.

### Gratitude for any Punishment For Child or Old Age

Contrary to the present criminal law, in Manusmriti, it has been said for a master child, an old or a polymath Brahmin, that if he comes as a tyrant, he should be killed immediately without thinking. Or punish by hitting with bamboo and do not impose fine or fine on them

### Punishment for Sexual Intercourse with Other Woman:

Adultery in India has long been considered an offense under the Indian Penal Code. Recently, in *Joseph Shine vs Union of India*, adultery is taken out of the crime's purview and confined to a behavioral offense based on which the husband and wife divorce their marriage. However, it has been said in Manusmriti that the king should punish the person engaged in sexual intercourse with a foreign woman by cutting of her nose and ears, etc. It is believed that if a woman does such an act under the influence of sex, then after declaring her guilt, she should be appointed as a slave. It has been done that if the sutra person does a forced union with a Brahmin woman, then he should be punished, here it is also a law that on the refusal of the owner or guardian, the man should not talk to the woman, otherwise he will be punished by 100 upper-caste people, But this arrangement is not in the conversation with the women of naats or singers. In Shlok 364, it is said that a male of the same caste should punish the union by gender piercing, whereas in Shlok 366, a woman of a superior caste is asked to voluntarily or involuntary intercourse shall make him guilty of penile piercing, murder or death.

### Penalties for Lesbian Relationship:

The reference to the Lesbian relationship, taken from the scope of crime at present, is also found in Manusmriti. Here there is a law to punish the girl with 205 for destroying the daughter's virginity, in which the girl's father is said to be given 400. It looks like a compensation system; the guilty is also given a punishment of 10 whips or belt.

### Harsh Punishment for Wife:

Although sexual intercourse with a foreign woman in human nature is not voluntary, then it is punishable, but if an adult wife does, it has been said that she should have cut by dogs in a place in the presence of many people. It should be punished by burning it by sleeping on an iron cot and putting wood on that cot so that the man dies by burning again; double punishment has been said for committing the crime again.

### Different Methods of Execution of Punishment of Different Varna

In Manusmriti, it has been said not only to give different punishment to the people of the community for the act of the same nature, it has also been said to determine that

punishment in a different way, for example, if a Brahmin is sentenced to life, then his shaving. Getting it done is the death penalty. To kill the other community is the death penalty.

### **Bigamy is no Crime**

In the present Indian Penal Code, where double marriage is considered a crime, it has been written in Manusmriti that if there is no child, if the first is to have a child or only gives birth to a girl, then by neglecting such a woman, the second marriage in her lifetime can be done.

### **Foeticide is Equivalent to Sin**

In Manusmriti also, foeticide is a sin, It is mentioned that not only those who kill the fetus remain full of the sin of their deeds, but who had a feast there, also becomes a part of their sin.

### **Freedom from Sin after Receiving Punishment**

If the guilty is punished, then his fault is not left; there is an equation that guilt plus punishment is equal to No Guilt i.e. when a man becomes sinless after being punished by the king, he goes to heaven like a virtuous soul.

## **CONCLUSION**

When the punishment system of Manusmriti is compared with the present penal system, then in many civilizations, some differences are also seen with them, such as the principles told about punishment and its Justification. Manusmriti has more emphasis on this principle terrifying, and prevention on the soul principle. There is not much mention of the system of vengeance, spiritual punishment, and there is no mention of the system of imprisonment in the forms of punishment. Also, the punishment system of the society is determined based on the basic characteristics of that society. The crimes of every society and period are different, and hence the punishment system of that society and period is also day to day is different as it seems.

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