

Dharmaśāstric Penology and Modern Indian Criminal Justice: Rereading Manusmṛti and Yājñavalkya Smṛti through a Human Rights Lens

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Abstract

This article undertakes a comparative analysis of the punishment systems (*daṇḍa-vyavasthā*) articulated in the Manusmṛti and the Yājñavalkya Smṛti (YS) in relation to modern Indian criminal justice and human rights discourse. Drawing upon the Vyavahārādhyāya of the YS, the most systematically codified legal section of classical Dharmaśāstra literature, the paper argues that the transition from Manu's *varna*-hierarchical penal logic to Yājñavalkya's relatively proceduralized jurisprudence constitutes an intra-system critique within the Smṛti tradition itself. The paper introduces the analytical category of Progressive Differential Inclusion (PDI) to theorize this internal advance across four dimensions, structural rationalization, substantive moderation, procedural expansion, and conceptual sophistication, while showing that Manu's *varna*-differentiated penal logic remains structurally incompatible with modern human rights norms. This classical progression is then examined against India's contemporary criminal justice reforms, particularly the Bharatiya Nyaya Sanhita (BNS) 2023, and against India's international human rights obligations. The study concludes that the BNS does not significantly connect with these indigenous normative resources, despite its official framing as a decolonizing reform, leaving India's legal decolonization mission unfinished. It comes to the conclusion that, when viewed through a decolonial lens, *Dharmaśāstric* penal theory offers constructive tension rather than merely antagonism or convergence with modern human rights frameworks.

Keywords: *Daṇḍa, Varna, Progressive Differential Inclusion, Bharatiya Nyaya Sanhita, Comparative Jurisprudence, Decolonization*

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1. Introduction

The relationship between classical Indian legal theory and modern jurisprudence is one of the most contentious and underdeveloped areas of inquiry in Indian political science and philosophy. Indian jurisprudence, at the most influential points in its post-colonial development, has oscillated between seeking to dismiss Dharmashastra as an expression of medieval Brahmanism (Ambedkar, 1936/2014) and appealing to it uncritically as a source of universal values. However, the present paper aims to demonstrate that both these approaches are profoundly misguided.

The present study takes a third path: a comparative textual and political analysis of the

daṇḍa-vyavasthā, the punishment system, as articulated in two foundational Smṛti texts, the Manusmṛti and the Yājñavalkya Smṛti (hereafter YS), set against the framework of modern Indian constitutional criminal justice and international human rights discourse. The choice of these two texts is deliberate. Among the major Smṛtis, the Manusmṛti is regarded as the most authoritative and oldest, while the Yājñavalkya Smṛti is esteemed for the inherent qualities of its composition. Crucially, the Yājñavalkya Smṛti gives a more systematic treatment of vyavahāra topics than the Manusmṛti, whose treatment of

judicial procedure is not as systematic and scientific.

The significance of this comparison lies in the textual archaeology it enables. The Yājñavalkya Smṛti scientifically arranges its contents in three sections: Ācāra (proper conduct), Vyavahāra (proper law), and Prāyaścitta (expiation): the first Smṛti writer to treat subjects under this tripartite division, which later Smṛti writers followed. The Vyavahārādhyāya, its second Kāṇḍa, constitutes what is arguably the most developed system of ancient Indian civil and criminal law. There are twenty-five prakaraṇas in the Vyavahārādhyāya, covering the king's judicial duties, rules of procedure, laws of evidence, ordeal, property, and penal provisions relating to assault, theft, sexual offences, and miscellaneous matters.

The theoretical urgency of this comparative exercise has acquired fresh political salience with the passage of the Bharatiya Nyaya Sanhita (BNS) 2023, which replaced the Indian Penal Code, 1860. India's criminal justice reforms claim a departure from colonial-era legal frameworks, yet the question of whether these reforms engage substantively with indigenous normative traditions, or merely perform symbolic decolonization, remains open. This paper takes that question seriously.

The argument proceeds in three stages. First, the paper reconstructs the internal logic of *daṇḍa* as a politico-legal concept in Dharmaśāstra thought, tracing the key differences between Manu's *varna*-differentiated penal regime and the YS's comparatively proceduralized approach. Second, it maps this classical system onto the architecture of modern Indian criminal justice: constitutional guarantees, BNS provisions, and international human rights conventions to which India is party. Third, it deploys the concept of Progressive Differential Inclusion (PDI), originally developed in the context of the YS's social inclusion provisions, to theorize the normative logic underlying the YS's penal moderation relative to Manu, and its partial resonance with contemporary equality jurisprudence. The paper's comparative findings are then synthesized in terms of what persists across the three frameworks examined (continuity) and what modern constitutional law has genuinely displaced (rupture).

This paper does not argue that the YS anticipates liberal human rights. It argues something more nuanced: that the YS enacts a form of intra-system critique that is legible to, though not identical with, modern rights discourse and that this

internal reformism deserves recognition on its own epistemic terms.

1.1 Methodology and Scope

The methodology is comparative and doctrinal. The Sanskrit verses of the Manusmṛti and the Yājñavalkya Smṛti are subjected to close reading in relation to their established critical translations and the secondary scholarship that has shaped the study of these texts, notably the works of Kane (1946), Lingat (1973), Derrett (1968), and Olivelle (1999, 2005). References to primary texts follow the standard chapter-and-verse numbering throughout. Unless otherwise noted, translations of the Manusmṛti follow Olivelle (2005), while translations of the Yājñavalkya Smṛti follow Yājñavalkya (1918). The present study is neither an independent work of philology nor a study of manuscript criticism. Rather, it focuses on the internal normative logic of the two texts as transmitted and received within the Smṛti corpus, rather than on the history of their composition..

The comparative scope is deliberately narrow. This paper compares the Manusmṛti and the Yājñavalkya Smṛti specifically, rather than the wider Dharmaśāstra corpus, because the YS's systematically organized Vyavahārādhyāya offers the clearest textual basis for the intra-tradition comparison undertaken here. The relative chronology of the two texts remains debated in Indological scholarship, and this paper's argument does not depend on a settled absolute chronology; it rests instead on the comparative content of the two texts as traditionally received within the Smṛti tradition, irrespective of their precise dating relative to one another. Similarly, the paper's engagement with contemporary Indian constitutional and human-rights law is oriented toward the doctrinal architecture directly relevant to *daṇḍa-vyavasthā*, rather than toward a comprehensive review of Indian constitutional theory.

2. Daṇḍa: Concept, Philosophy, and Political Significance in Dharmaśāstra Thought

2.1 Daṇḍa as Cosmic and Political Principle

The most authoritative classical account of the cosmological significance of *daṇḍa* appears in the *Manusmṛti* (7.14), which states that Brahmā created *daṇḍa* as a manifestation of divine glory and as the protector of all beings. Likewise, *Yājñavalkya* (1.353) states that “Brahmā created Dharma in the form of Punishment” (*daṇḍarūpeṇa dharmam brahmaṇā sṛṣṭam*; Yājñavalkya, 1918). This cosmological foundation of punishment is not merely a peripheral theological proposition; rather, it constitutes a fundamental premise of the

Dharmaśāstric theory of punishment. Punishment is therefore more than a mechanism arising from a social contract; in the classical conception, it represents the manifestation of the universal principles of ṛta and dharma themselves (Kane, 1946, Vol. 3; Davis, 2010).

Modern liberal penology is grounded in social contract theory (Rawls, 1971), utilitarian deterrence (Bentham, 1789/1996), or Kantian retributivism (Kant, 1797/1996). By contrast, the Dharmaśāstric tradition roots punishment in an ontology of the moral, cosmic, and political order: *daṇḍa* is inextricably linked to *rājadharmā* (the duties of sovereignty) and the maintenance of *varṇāśramadharmā* (social and ritual order).

2.2 The Four Forms of *Daṇḍa* in *Manusmṛti*

Manu's taxonomy of punishment is graduated, and it has been cited widely in the secondary literature. Four principal types appear in the text: *vāk-daṇḍa* (verbal admonition), *dhik-daṇḍa* (censure or public rebuke), *dhana-daṇḍa* (monetary fine), and *bādha-daṇḍa* (corporal punishment, including death). Later commentators added two more categories: confiscation of property (*dhana-haraṇa*) and public humiliation (*avasādana*) (Kane, 1946, Vol. 3; Lingat, 1973). Together these six span a spectrum from mild to severe, and Manu says explicitly that they may be combined to reach a proportionate sentence. That proportionality is itself shaped by *varṇa*, though: the same offence drew radically different punishments depending on the offender's rank. Śūdras consistently received the harshest physical penalties, while Brāhmaṇas enjoyed near-complete immunity from corporal punishment (*Manusmṛti* 8.267–8.270; Olivelle, 2005).

2.3 *Daṇḍanīti*: The Science of Governance through Punishment

More than a jurisprudential category, *daṇḍa* in the classical tradition is also a science of statecraft, *daṇḍanīti*, structuring the whole relationship between king, state, and society. Sondhi (2023) describes how *daṇḍanīti* in the Indian tradition conceives of the state, in this sense, as a 'pedagogic institution or moral laboratory' where law restrains vice while enabling the realization of human potential. That picture departs sharply from the Hobbesian state as coercive sovereign. In the Dharmaśāstric framework, the purpose of *daṇḍa* exists ultimately for *dharma-sthāpanā* (the establishment of righteousness), not merely to maintain order.

Kauṭilya's *Arthaśāstra* belongs to a distinct tradition from the Smṛtis, yet it shares this same framework: there, *daṇḍanīti* is presented as the

foundational science on which all the other sciences (*vidyās*) depend (Olivelle, 2013, 1.4). The Smṛti tradition inherits this understanding and refines it further, and the Yājñavalkya Smṛti represents its most systematic legal codification.

2.4 *Daṇḍa* and *Prāyaścitta*: The Two Modes of Legal-Moral Correction

The dharmaśāstras possess one unique and modern feature in their penal discipline: namely, the Dharmaśāstra division of punishments into *daṇḍa* and *prāyaścitta*. By *daṇḍa*, we understand punishments enforced by the state, which are exacted by the king or his officers. *Prāyaścitta* refers to expiatory rites performed by the offender for the restoration of his ritual and moral status in society (Olivelle & Davis, 2018; Davis, 2010). The Yājñavalkya Smṛti dedicates its third Kāṇḍa, the *Prāyaścittādhyāya*, to this subject, discussing it in equal detail with the *Vyavahārādhyāya*, which deals with law proper.

This dual architecture has significant implications for human rights discourse. The existence of *prāyaścitta* as a parallel corrective mechanism suggests that the Dharmaśāstric tradition did not conceive of punishment purely in terms of state power over the individual body; it maintained a distinct domain of moral self-correction that the state could not entirely colonize. This is a dimension of classical Indian penology that contemporary comparative legal scholarship has insufficiently theorized (Kumar & Choudhury, 2021).

2.5 The Analytical Category of Progressive Differential Inclusion (PDI)

This paper introduces the concept of Progressive Differential Inclusion (PDI) as an analytical framework for reading the YS's penal system. PDI, developed in the context of this author's doctoral research on social inclusion in the YS, refers to a normative logic whereby inclusion in a legal or social order is achieved not through uniform treatment but through differential, yet progressively less discriminatory, regulation. Under PDI, the YS's relative moderation of Manu's harsher *varṇa*-discriminatory punishments is not read as a failure to achieve equality, but as an internal reform movement within the Dharmaśāstric tradition that progressively expands the scope of legal protection across social groups.

This framework allows us to resist two equally reductive interpretive moves: the nationalist romanticization of Dharmaśāstra as proto-egalitarian, and the colonial/Ambekarite dismissal of the entire tradition as irredeemably brahminical. PDI holds that the YS represents a

genuine, if incomplete and structurally constrained, normative advance over Manu's penal regime, one that deserves to be theorized on its own epistemic terms before being measured against modern human rights standards.

3. The Penal System of the Manusmṛti: Varna Hierarchy and Differential Justice

3.1 The King as the Locus of Punitive Authority

In the *Manusmṛti*, punitive authority is concentrated in the person of the king (*rājā*). The king is presented as embodying the powers of the eight divine guardians, the *aṣṭa-lokapāla*; Indra, Vāyu, Yama, Sūrya, Agni, Varuṇa, Candra, and Kubera (*Manusmṛti* 7.4–7.8). This divine constitution is more than a ceremonial attribution; it provides an ontological foundation for the king's authority to punish, placing that authority within a cosmic order that precedes and transcends any merely social arrangement. Manu further states that when a king fails to punish the guilty, he incurs their sins himself, making the exercise of *danḍa* not merely a political prerogative but also a duty grounded in *dharma* (*Manusmṛti* 8.18; Kane, 1946, Vol. 3). This theological foundation has two important implications. First, punishment is understood as a moral necessity rather than simply as a matter of social utility: the king exercises *danḍa* because the maintenance of cosmic order requires it, rather than merely because punishment may produce deterrent effects. Second, the king's judgment becomes inseparable from his own ritual status. A dharmic king can administer *danḍa* justly; an adharmic king corrupts the whole penal system by exercising it at all. Manu's vision of punishment therefore depends, radically, on the moral quality of the sovereign himself, which sets it apart from modern rule-of-law frameworks, where institutional procedure rather than personal virtue is meant to guarantee justice (Lingat, 1973; Derrett, 1968).

3.2 The Eighteen Vyavahārapadas: Categories of Legal Dispute

Manu's legal system organizes civil and criminal disputes under eighteen vyavahārapadas (titles of law), enumerated in *Manusmṛti* 8.4–7. These include: non-payment of debts (*ṛṇādāna*), deposits (*nikṣepa*), sale without ownership (*asvāmivikraya*), partnership disputes (*sambhūya-samutthāna*), non-delivery of gifts (*dattasyānapakarma*), non-payment of wages (*vetanasyānapakarma*), breach of contract (*samayasyānapakarma*), cancellation of sale (*vikrīyāsampradāna*), disputes between owners and herdsmen (*paśuvivāda*), boundary disputes (*sīmāvivāda*), assault (*danḍapāruṣya*), defamation

(*vākpāruṣya*), theft (*steḍya*), violence (*sāhasa*), sexual offences (*strīsaṃgrahaṇa*), duties of husband and wife (*strīpūṇḍharma*), partition of inheritance (*vibhāga*), and gambling (*dyūta*) (Kane, 1946, Vol. 3; Jolly, 1928; Singh & Akshay, 2024). This taxonomy encompasses both what modern law would classify as civil disputes and criminal offences, reflecting the Dharmaśāstric tradition's refusal to draw a sharp boundary between private wrong and public crime, a distinction that is foundational to modern criminal jurisprudence.

3.3 Varna-Differentiated Punishment: The Structural Core of Manu's Penal Logic

The most analytically significant, and most ethically contested, feature of Manu's *danḍa-vyavasthā* is its systematic differentiation of punishment on the basis of *varna*. This differentiation operates along two axes simultaneously: the *varna* of the offender and the *varna* of the victim. The combined effect produces a penal matrix in which identical acts attract radically different punishments depending on the social positions of the parties involved.

The general principle, stated explicitly in the *Manusmṛti*, is that punishment increases as the social status of the offender decreases: the lower the *varna* of the offender, the harsher the punishment for the same offence. Conversely, the higher the *varna* of the victim, the more severe the punishment imposed on the offender. This dual-axis differentiation produces outcomes that are deeply antithetical to modern equality jurisprudence.

Several specific provisions illustrate this logic with particular clarity. First, regarding theft: Manu prescribes that the punishment for theft is multiplied according to the *varna* of the offender: a Śūdra pays the highest multiple of the stolen value as fine, while a Brāhmaṇa pays the lowest (*Manusmṛti* 8.337–8.338; Olivelle, 2005). Second, regarding sexual offences: Manu prescribes that a Śūdra who has intercourse with an unguarded woman of the twice-born (*dvija*) castes shall lose the offending limb, and if the woman is guarded, he shall lose his life; while a Brāhmaṇa committing a similar offence against a woman of lower *varna* is required only to pay a monetary fine in ascending order of the woman's *varna* (*Manusmṛti* 8.374–8.376; Lingat, 1973). Third, regarding capital punishment: Manu prescribes that where other castes would face death, a Brāhmaṇa shall receive only tonsure of the head (*śiromuṇḍana*) as the maximum punishment, granting effective immunity from

capital punishment to the highest *varna* (Manusmṛti 8.379–8.380; Kane, 1946, Vol. 3).

This systematic *varna*-differentiation in penal provisions is not an incidental feature of Manu's system; it is structurally central to it. The Manusmṛti's penal logic is explicitly premised on the principle that equal treatment of unequal persons would itself be *adharma*: justice, in this framework, requires not formal equality but proportionality to social station (Derrett, 1968). This is a philosophically coherent position within its own normative universe, but it is one that stands in fundamental tension with the constitutional guarantee of equality before the law enshrined in Article 14 of the Indian Constitution.

3.4 Corporal and Capital Punishment in Manu: Scope and Rationale

Manu's provisions for corporal and capital punishment (*bādha-daṇḍa*) are extensive and include mutilation (*aṅgaccheda*), branding (*dāgha*), banishment (*nirvāsana*), public humiliation, and death in various forms. These provisions apply most severely to offences involving theft, assault, sexual violence, and crimes against the social order, particularly those involving inter-*varna* transgression. The rationale offered by Manu for corporal punishment is explicitly deterrent and cosmological: physical punishment purifies the offender of his karmic debt while simultaneously deterring others (Manusmṛti 8.318; Kane, 1946, Vol. 3).

Crucially, Manu's corporal punishment provisions demonstrate a pattern that Ambedkar (1936/2014) identified as foundational to the violence of the caste system: the body of the lower-caste person is constructed as the primary site of penal inscription, while the body of the Brāhmaṇa is constitutively protected from physical harm by the state. This asymmetry represents perhaps the sharpest point of conflict between Manu's penal system and contemporary human rights norms, particularly the prohibition of torture and cruel, inhuman, or degrading punishment under Article 5 of the Universal Declaration of Human Rights (1948) and Article 21 of the Indian Constitution as interpreted in *Francis Coralie Mullin v. Union Territory of Delhi* (1981).

3.5 Procedural Provisions: Evidence, Witnesses, and Judicial Process

Despite its substantive *varna*-differentiation, Manu's system also contains procedural provisions that reflect a concern for evidentiary fairness. The king is required to decide cases on the basis of evidence (*sākṣya*), written documents (*likhita*), possession (*bhukti*), and divine tests (*divya*) when other evidence is unavailable

(Manusmṛti 8.114–8.116). Witnesses must be reliable, and Manu specifies elaborate criteria for witness eligibility, including restrictions based on *varna*, gender, and moral standing, that simultaneously reflect procedural concern and social hierarchy (Borah et al., 2020).

The Manusmṛti also recognizes the principle that punishment must be preceded by proper inquiry: the king must not punish hastily, and false accusation itself attracts punishment (Manusmṛti 8.123–8.126). These procedural safeguards, limited as they are by *varna*-based restrictions on witness eligibility and judicial access, represent a nascent, if structurally constrained, concern for due process that the YS would develop more systematically.

4. The Penal System of the Yājñavalkya Smṛti: Toward Greater Systematization and Procedural Refinement

4.1 Structural Innovation: The Tripartite Architecture and Its Legal Significance

The YS's most fundamental structural contribution to Dharmaśāstric jurisprudence is its tripartite organization of the entire text into *Ācārādhyāya* (proper conduct), *Vyavahārādhyāya* (proper law), and *Prāyaścittādhyāya* (expiation), a division that Yājñavalkya was the first Smṛti writer to formalize and that all subsequent Smṛti writers followed (Kane, 1946, Vol. 3). This tripartite structure is not merely organizational convenience; it carries profound jurisprudential significance. By separating *vyavahāra* (law and judicial procedure) from *ācāra* (social and ritual conduct) and *prāyaścitta* (moral expiation), the YS effectively establishes law as a relatively autonomous domain with its own internal logic, procedures, and standards of evidence, a proto-juridical autonomy that is absent in the Manusmṛti's more integrated, less differentiated treatment of these domains.

The *Vyavahārādhyāya* itself contains twenty-five *prakaraṇas* (sub-sections) organized with considerable systematic care, covering the king's judicial duties, rules of procedure, plaint and reply, laws of evidence, ordeal, property, inheritance, and penal provisions relating to assault, theft, sexual offences, and miscellaneous matters. This systematic arrangement, which Manu's treatment conspicuously lacks, enables a more consistent application of legal principles and reduces the scope for arbitrary royal discretion, a concern that is directly relevant to the rule-of-law values embedded in modern constitutional jurisprudence (Khanna, 2026; Davis, 2010).

4.2 The Three Grades of Monetary Punishment: A Rationalized Penal Scale

One of the most significant innovations of the YS's penal system is its formal definition and rationalization of three grades of monetary fine, *prathama sāhasa* (lowest amercement), *madhyama sāhasa* (middle amercement), and *uttama sāhasa* (highest amercement). Yājñavalkya defines these with numerical precision: the highest amercement (*uttama sāhasa*) consists of one thousand and eighty *paṇas*, the middle amercement (*madhyama sāhasa*) is half of that, five hundred and forty *paṇas* and the lowest amercement (*prathama sāhasa*) is half again, two hundred and seventy *paṇas* (YS 2.239; Kane, 1946, Vol. 3). This quantified, rationalized scale of monetary punishment represents a significant advance over Manu's more diffuse and context-dependent fine provisions, and reflects a move toward formal legal rationality, the application of general, calculable rules rather than substantive value judgments within the Dharmaśāstric framework.

4.3 Moderation of Varna-Based Corporal Punishment: A Relative Normative Advance

The most significant point of normative divergence between the YS and the Manusmṛti lies in the former's systematic moderation of Manu's *varna*-based corporal punishment provisions. This moderation operates across multiple dimensions and constitutes the empirical core of the PDI argument advanced in this paper. First, regarding the position of Śūdras: the Vyavahārādhyāya of the YS contains no repressive law against a Śūdra disputing with brāhmaṇas, or against a Śūdra learning or owning property, provisions that are present, explicitly or implicitly, in the Manusmṛti (Kane, 1946, Vol. 3). Second, regarding inter-*varna* offences: where Manu prescribes loss of limb or life for a Śūdra committing sexual offences against twice-born women, the YS prescribes provisions that apply to all non-brāhmaṇas collectively rather than singling out Śūdras specifically (YS 2.235; Kane, 1946, Vol. 3). More significantly, the YS explicitly replaces many of Manu's corporal punishments for lower-caste offenders with pecuniary punishments, substituting monetary fines for mutilation and death in numerous categories of offence. Third, regarding Brāhmaṇa immunity: while the YS retains certain privileges for Brāhmaṇas, it does not maintain Manu's claim to complete Brāhmaṇa immunity from penal provisions (Kane, 1946, Vol. 3; Lingat, 1973).

4.4 Procedural Innovations: Evidence, Witnesses, and Access to Justice

The YS's procedural provisions represent a significant advance over Manu's in terms of both

systematization and inclusiveness. First, regarding witness eligibility: the YS (2.69) permits limited cross-caste admissibility of witnesses, specifically, witnesses from other castes may testify only in the absence of witnesses from the same caste as the parties (Kane, 1946, Vol. 3), a procedural expansion rather than a substantive equality of witness status. Second, regarding the rights of the accused: the YS contains more elaborate provisions than Manu for protecting the procedural rights of defendants, including specific rules regarding the time allowed for filing a defense and the standards of evidence required for conviction (YS 2.7–2.20; Lingat, 1973). Third, regarding judicial review: Yājñavalkya explicitly allows for review and appeal of judicial decisions, a provision with no clear parallel in Manu's system (YS 2.307; Kane, 1946, Vol. 3). The formal recognition of appeal rights in the YS finds direct correspondence in the appellate provisions of the Code of Criminal Procedure (Sections 372–405) and the Code of Civil Procedure (Sections 96–114) of modern Indian law (Singh & Akshay, 2024).

4.5 Accident, Intent, and the Principle of Mens Rea

Perhaps the most conceptually significant contribution of the YS to classical Indian penology is its attention to the mental element of crime, a concern that parallels the modern legal doctrine of *mens rea* (guilty mind). The YS contains provisions regarding the liabilities of owners of conveyances and keepers of four-footed animals (2.298–299) in which liability turns on considerations of agency, causation, and the presence or absence of negligence or intent on the owner's part. This should not be read as a direct equivalent of the modern *mens rea* doctrine, but it bears a suggestive parallel to Section 80 of the Indian Penal Code, which exempts from criminal liability acts caused by accident or misfortune without criminal intent (Singh & Akshay, 2024).

4.6 Progressive Differential Inclusion: Synthesizing the YS's Penal Advance

The analytical picture that emerges from the foregoing analysis supports the PDI framework advanced in this paper. The YS's *daṇḍa-vyavasthā* achieves normative advance over Manu's through four specific mechanisms: first, structural rationalization through the tripartite organization and quantified fine scales; second, substantive moderation through the substitution of monetary for corporal punishment in specific categories of offence (see §4.3) and the elimination of the most extreme anti-Śūdra provisions; third, procedural

expansion through more inclusive witness rules, defendant protections, and appeal rights; and fourth, conceptual sophistication through the recognition of intent as a legally relevant consideration.

None of these advances constitutes the achievement of formal legal equality in the modern sense. The YS retains *varna*-differentiated punishment, Brāhmaṇa privilege, and gender-based restrictions that are fundamentally incompatible with contemporary human rights norms. PDI does not claim otherwise. What PDI claims is that these advances represent a genuine internal reformism within the Dharmaśāstric tradition, a normative trajectory toward greater inclusion and procedural fairness that is analytically distinct from, but not unrelated to, the trajectory of modern rights-based jurisprudence.

5. Modern Indian Criminal Justice: From Colonial Codification to Constitutional Reform

5.1 The Colonial Inheritance: IPC 1860 and its Dharmaśāstric Disavowal

The Indian Penal Code 1860, drafted primarily by Thomas Babington Macaulay, was premised on an explicit rejection of indigenous legal traditions. The IPC accordingly drew on English common law, utilitarian penal philosophy, and the codification traditions of continental Europe, producing a statute that was formally universal, applying equally to all persons regardless of caste, religion, or social status, but substantively colonial in its assumptions about criminality, evidence, and judicial procedure (Singh & Akshay, 2024; Khanna, 2026).

This colonial universalism represented a double rupture with the Dharmaśāstric tradition. On one hand, it abolished the *varna*-differentiated penal logic of both Manu and the YS, establishing formal equality before the law as a statutory principle for the first time in Indian legal history. On the other hand, it also abolished the dual architecture of *daṇḍa* and *prāyaścitta*, reducing the complex moral-legal ecology of Dharmaśāstric penology to a purely statist framework of criminal liability and punishment (Davis, 2010; Borah et al., 2020).

5.2 Constitutional Foundations: Equality, Due Process, and Human Dignity

The Constitution of India (1950) establishes a comprehensive framework of fundamental rights that governs the exercise of criminal justice power. Article 14 guarantees equality before the law and equal protection of the laws to all persons, a direct constitutional repudiation of the *varna*-

differentiated penal logic of both Manu and, to a lesser extent, the YS. The Supreme Court's interpretation of Article 14 has progressively expanded its scope beyond formal equality to encompass substantive equality, the requirement that laws must not only apply uniformly but must not produce substantively discriminatory outcomes. This doctrine of substantive equality, developed through cases such as *E.P. Royappa v. State of Tamil Nadu* (1974) and *Maneka Gandhi v. Union of India* (1978), represents a jurisprudential standard that the Dharmaśāstric tradition did not achieve but toward which the YS's penal moderation can be read as a partial internal movement.

Article 21 guarantees the right to life and personal liberty, which the Supreme Court has interpreted as encompassing the right to live with human dignity, the right against torture, and the right to a fair and speedy trial. The landmark judgment in *Francis Coralie Mullin v. Union Territory of Delhi* (1981) established that Article 21 prohibits any punishment that is cruel, degrading, or disproportionate, a standard that would render many of Manu's corporal punishment provisions unconstitutional while being more compatible with the YS's relatively moderated penal regime. Article 20 provides three specific protections against arbitrary criminal punishment: the prohibition of ex post facto laws (Article 20 (1)), the prohibition of double jeopardy (Article 20 (2)), and the right against self-incrimination (Article 20(3)). Article 22 guarantees the right to be informed of grounds of arrest, the right to consult a legal practitioner, and the right to be produced before a magistrate within twenty-four hours of arrest, provisions that reflect a concern for the rights of arrested persons that Verma and Chhajta (2014) have traced, in nascent form, to classical Indian legal texts including the YS.

5.3 The Bharatiya Nyaya Sanhita 2023: Reform, Continuity, and Symbolic Decolonization

The enactment of the BNS 2023, BNSS 2023, and BSA 2023 by the Indian Parliament represents the most significant statutory reform of criminal justice since 1860. As Kowshikaa (2024) comprehensively analyzes, these new laws introduce several substantive and procedural innovations. In terms of substantive criminal law, the BNS 2023 introduces gender-neutral language in several offence categories, expands the definition of organized crime, introduces community service as a punishment for minor offences, and restructures the chapter on offences against the state. The introduction of community service as a punishment option is particularly

noteworthy from a Dharmaśāstric comparative perspective: it partially echoes the logic of *prāyaścitta* as a restorative rather than purely punitive mode of legal correction (Kowshikaa, 2024).

In terms of procedural reform, the BNSS 2023 mandates forensic investigation for offences punishable with seven or more years of imprisonment, introduces the Zero FIR mechanism, expands provisions for electronic evidence and digital documentation, and provides for trial in absentia in cases where an accused is a proclaimed offender (Kowshikaa, 2024). However, the BNS reforms also attract significant criticism from a human rights perspective, particularly regarding extended police custody provisions, trial in absentia due process concerns, and the retention of capital punishment for a range of offences (Kumar & Choudhury, 2021).

5.4 India's International Human Rights Obligations

India is party to several international human rights instruments that directly govern the exercise of criminal justice power. These include the International Covenant on Civil and Political Rights (ICCPR; United Nations, 1966; ratified by India in 1979), the Convention Against Torture (CAT; OHCHR, 1984; signed by India in 1997 but not ratified), the Convention on the Rights of the Child (CRC; OHCHR, 1989; ratified by India in 1992), and the Universal Declaration of Human Rights (UDHR; UNGA, 1948) to which India was an original signatory. India's non-ratification of the CAT is particularly significant: it means that the prohibition of torture in Indian criminal justice rests primarily on domestic constitutional interpretation (Article 21) rather than international treaty obligation (Kumar & Choudhury, 2021).

5.5 The Decolonization Question: Symbolic Reform or Substantive Transformation?

The BNS reforms have been officially framed by the Indian government as a decolonization of criminal justice. This framing raises a question directly relevant to the comparative argument of this paper: does the replacement of the IPC with the BNS represent a genuine engagement with India's indigenous legal traditions, including the Dharmaśāstric *danḍa-vyavasthā*? On the evidence examined in this paper, the answer is largely negative. The BNS 2023 draws overwhelmingly on the IPC's substantive provisions, retaining its formal equality framework, its utilitarian penal philosophy, and its statist conception of criminal liability. The sources reviewed here show no systematic doctrinal engagement with

Dharmaśāstric legal traditions in the drafting of the BNS (Khanna, 2026; Singh & Akshay, 2024) suggesting that India's project of legal decolonization remains incomplete, performed at the level of nomenclature while leaving the epistemological foundations of colonial criminal law largely undisturbed.

6. Mānavadhikār Vimarśa aur Smṛti-Parampara: Tension, Dialogue, and the Limits of Cross-Civilizational Comparison

6.1 The Universalist Critique: Ambedkar and the Human Rights Case Against Dharmaśāstra

The most powerful and politically consequential critique of Dharmaśāstric penology from a human rights perspective was advanced by B.R. Ambedkar, whose intellectual legacy continues to shape Indian constitutional jurisprudence and Dalit political thought. Ambedkar's critique, most systematically articulated in *Annihilation of Caste* (1936) and elaborated in his later constitutional writings, proceeds on three levels: empirical documentation of *varna*-differentiated penal violations; structural argument that the hierarchical differentiation is constitutive rather than reformable; and epistemological critique that Dharmaśāstric traditions are irredeemably brahminical in their knowledge production (Ambedkar, 1936/2014).

The structural critique has considerable force when directed at the Manusmṛti; but its applicability to the YS is more ambiguous, given the YS's systematic moderation of precisely those provisions that Ambedkar most forcefully condemned (Kane, 1946, Vol. 3; Lingat, 1973). PDI does not deny the brahminical character of YS's authorship and institutional context. What it argues is that even within a brahminical epistemic framework, normative advances toward greater inclusion are possible and analytically significant (Kumar & Choudhury, 2021; Davis, 2010).

6.2 The Romanticist Trap: Indigenous Legal Traditions and the Dangers of Uncritical Recovery

A strand of scholarship, particularly visible in the context of Hindu nationalist politics, has argued that classical Indian texts already contain the essential elements of modern human rights. This romanticist position is analytically untenable on multiple grounds. First, it requires selective reading that ignores the *varna*-differentiated provisions constituting the structural core of Dharmaśāstric penology. Second, it conflates formal resemblance with conceptual equivalence. Third, the romanticist recovery serves a politically conservative function, naturalizing existing social hierarchies by presenting them as consistent with

universal values, thereby deflecting the transformative demands of Dalit, feminist, and minority rights movements (Khanna, 2026; Singh & Singh, 2009). The PDI framework explicitly rejects this romanticist move.

6.3 Productive Tensions: Where Dharmaśāstric and Human Rights Frameworks Converge

Despite fundamental normative tensions, there are several specific domains where the YS's penal framework and contemporary human rights discourse exhibit productive convergence. First, the principle of proportionality in punishment, the YS's rationalized scale of three grades of monetary fine reflects a concern for proportionality that, while structured by *varna*, represents an internal movement toward the rationalization of punishment that modern proportionality doctrine also seeks (Kane, 1946, Vol. 3; Kowshikaa, 2024). Second, the recognition of intent as a legally relevant consideration anticipates in a structurally limited but conceptually significant way the modern doctrine of *mens rea* (Singh & Akshay, 2024; Kumar & Choudhury, 2021). Third, the YS's provision allowing all castes to serve as witnesses for all other castes represents a limited expansion of access to judicial process that resonates with the ICCPR's Article 14 guarantee (United Nations, 1966). Fourth, the YS's maintenance of *prāyaścitta* as a parallel corrective mechanism reflects a conception of justice that resonates with contemporary restorative justice theory (Kumar & Choudhury, 2021).

6.4 Fundamental Incompatibilities: Where Dharmaśāstric Penology Cannot Be Reconciled with Human Rights

Three fundamental incompatibilities must be clearly acknowledged. First, the retention of *varna*-based differentiation in punishment, even in the YS's moderated form is fundamentally incompatible with Article 14 and Article 15 of the Indian Constitution. Second, the gender-based restrictions on witness eligibility, judicial access, and legal standing in the YS are fundamentally incompatible with Article 15(1) and India's obligations under CEDAW (ratified 1993). Third, the YS's reliance on divine tests (*divya*), including ordeals of fire, water, balance, and poison, is fundamentally incompatible with modern evidentiary standards and with the human rights prohibition of torture (Olivelle & Davis, 2018; Kumar & Choudhury, 2021).

6.5 The Decolonial Imperative: Reading Dharmaśāstra Without Colonial Mediation

As Khanna (2026) argues, India's constitutional order is best understood as a transformation rather

than a rejection of its older dharmic legal and political traditions, a transformation mediated by colonial codification that narrowed indigenous traditions into 'personal law' and subordinated customary institutions to Anglo-Indian legal categories (Menski, 2003). A decolonial reading of Dharmaśāstric penology therefore requires not simply recovering the classical texts but recovering them from their colonial misappropriation, recognizing that the YS's more proceduralized, more moderating jurisprudence was systematically marginalized in colonial legal construction in favor of Manu's more hierarchical framework (Lingat, 1973; Davis, 2010).

7. Comparative Analysis: Continuity, Rupture, and the Analytical Productivity of Progressive Differential Inclusion

7.1 Continuities: What Persists Across the Tradition

The comparative analysis reveals four significant continuities across the three legal frameworks examined in this paper. First, the principle of proportionality as a governing norm of punishment persists across all three frameworks, Manu, the YS, and the BNS, even as the criteria of proportionality differ radically (Kane, 1946, Vol. 3; Kowshikaa, 2024). Second, the distinction between intentional and unintentional wrongdoing as a legally relevant consideration runs as a continuous thread across all three frameworks (Singh & Akshay, 2024; Lingat, 1973). Third, the structural importance of procedure as a guarantor of legitimate punishment is common to all three systems (Borah et al., 2020; Kumar & Choudhury, 2021). Fourth, the conception of punishment as serving simultaneously deterrent, corrective, and social-order-maintaining functions appears across both classical and modern frameworks (Davis, 2010; Sondhi, 2023).

7.2 Ruptures: Where Modern Law Constitutes a Genuine Break

Against these continuities, the comparative analysis also reveals four genuine and irreversible ruptures. First, the constitutional abolition of *varna*-based differential punishment, through Articles 14 and 15, represents a paradigm shift from proportionality-to-social-station to formal equality regardless of social station (Ambedkar, 1936/2014; Khanna, 2026). Second, the abolition of divine tests and ordeals as modes of evidence marks an epistemological rupture from magico-religious to secular-rational truth-determination (Olivelle & Davis, 2018; Singh & Akshay, 2024). Third, the comprehensive constitutional and statutory repudiation of women's legal

subordination constitutes a structural transformation of the gender architecture of classical Dharmaśāstric law (Kumar & Choudhury, 2021). Fourth, the shift from personalized royal authority to impersonal constitutional authority represents a fundamental transformation of the political sociology of punishment that no degree of internal Smṛti reform could have achieved (Lingat, 1973; Derrett, 1968).

7.3 Progressive Differential Inclusion: The Analytical Synthesis

PDI, as developed in this paper, rests on four analytical claims. The first claim is descriptive: the YS's *daṇḍa-vyavasthā* represents a genuine normative advance over Manu's penal system along four specific dimensions, structural rationalization, substantive moderation, procedural expansion, and conceptual sophistication. The second claim is interpretive: this internal advance reflects a deliberate normative trajectory within the Dharmaśāstric tradition toward greater inclusion and procedural fairness. The third claim is theoretical: PDI provides a more analytically productive framework for understanding this internal advance than either the universalist human rights framework or the cultural relativist framework. The fourth claim is political: PDI has implications for contemporary debates about legal decolonization in India: a serious decolonial project must engage substantively with the normative resources of the indigenous tradition, including the YS's procedural innovations, its moderation of extreme penal provisions, and its dual architecture of *daṇḍa* and *prāyaścitta* (Khanna, 2026; Singh & Akshay, 2024).

PDI should be distinguished from two adjacent theoretical vocabularies with which it might otherwise be conflated. It differs from 'reformist hermeneutics' as developed in comparative religious-law scholarship, which typically describes a self-conscious, later reinterpretation of a founding text against that text's plain sense. The YS's advance over Manu is not presented here as a self-conscious reformist departure from Manu; it is better understood as an alternative systematization operating within the same normative universe. PDI also differs from historical institutionalism's concept of 'layering,' which describes new institutional rules accreting alongside older ones without displacing them. The YS does not simply layer new provisions atop Manu's; it reworks the same normative domain, proportionality, evidence, procedure, according to a more inclusive logic. PDI is offered,

therefore, as a category specific to intra-textual normative advance within a shared Dharmaśāstric idiom, rather than as a relabeling of either reformist hermeneutics or institutional layering.

7.4 A Structured Comparative Matrix

Table 1 synthesizes the key findings of this paper across the three frameworks examined:

Dimension	Manusmṛti	Yājñavalkya Smṛti	BNS 2023/Constitution
Basis of punitive authority	Cosmological/Royal	Cosmological/Royal (proceduralized)	Constitutional/Democratic
Equality principle	Varna-hierarchical	Varna-moderated	Formally equal
Proportionality	Varna + offence	Rationalized scale + varna	Offence-gravity alone
Corporal punishment	Extensive, varna-differentiated	Moderated, substituted by fines	Restricted (Article 21)
Capital punishment	Extensive, varna-exempt for Brāhmaṇas	Moderated	Retained (limited)
Evidence standard	Varna-restricted, ordeals permitted	Cross-caste expanded, ordeals retained	Secular-rational, forensic
Appeal rights	Absent/implicit	Explicitly recognized	Statutory (CrPC/BNS)

Dimension	Manusmṛti	Yājñavalkya Smṛti	BNS 2023/Constitution
Intent (mens rea)	Nascent	More developed	Fully systematized
Gender	Subordinate	Subordinate	Equal (constitutional)
Restorative element	Prāyaścitta (parallel)	Prāyaścitta (parallel)	Community service (BNS)
PDI trajectory	Baseline	Advance	Transformation

Table 1: Comparative Analysis of Penal Frameworks: Manusmṛti, Yājñavalkya Smṛti, and BNS 2023

8. Conclusion

This paper has undertaken a systematic comparative analysis of the *daṇḍa-vyavasthā* as articulated in the Manusmṛti and the Yājñavalkya Smṛti, and examined this classical penal tradition in relation to modern Indian criminal justice and international human rights discourse. The analysis has been organized around three master categories, continuity, rupture, and progressive differential inclusion, and has deployed the PDI framework as an original analytical contribution to the comparative jurisprudence of classical Indian law.

The principal findings of this paper may be stated as follows. First, the Manusmṛti's penal system, while internally coherent within its own normative universe, is structurally incompatible with modern human rights norms in its *varna*-differentiated punishment provisions, its Brāhmaṇa immunity from corporal punishment, its ordeal-based evidentiary provisions, and its subordination of women's legal standing. Ambedkar's structural critique of Manu, read through the PDI framework, retains its full force. Second, the Yājñavalkya Smṛti represents a genuine and analytically significant normative advance over Manu's penal framework along four specific dimensions: structural rationalization through tripartite organization and quantified fine scales; substantive moderation through the extensive, though not exhaustive (*bandigrāhāmstathā..... śūlānāropayennarān*

YS 2.273), substitution of monetary for corporal punishment and the elimination of the most extreme anti-Śūdra provisions; procedural expansion through more inclusive witness rules, defendant protections, and formally recognized appeal rights; and conceptual sophistication through the recognition of intent as a legally relevant consideration. These advances constitute what this paper has theorized as Progressive Differential Inclusion.

Third, by the analytical criterion of decolonization developed in this paper, the Bharatiya Nyaya Sanhita 2023 does not constitute genuine legal decolonization in any substantive sense. It replaces colonial nomenclature while retaining the epistemological framework of colonial criminal law without engaging with the normative resources of indigenous legal traditions that are constitutionally compatible and intellectually productive. The YS's procedural innovations, its dual architecture of *daṇḍa* and *prāyaścitta*, and its internal reformist trajectory represent precisely such resources.

Fourth, the relationship between Dharmaśāstric penology and contemporary human rights discourse is best theorized neither as simple opposition nor as hidden convergence, but as productive tension: a relationship in which the two traditions share certain structural concerns while differing fundamentally in their conceptions of equality, evidentiary rationality, gender, and institutional authority.

The unfinished project of Indian legal decolonization requires engagement with this complexity. Replacing the words without engaging the ideas is not decolonization; it is renaming. A genuine decolonial jurisprudence must do the harder work of recovering, critically evaluating, and selectively incorporating the normative resources of indigenous legal traditions, including the YS's procedural innovations, its restorative *prāyaścitta* framework, and its internally reformist penal logic into the ongoing project of building a criminal justice system adequate to India's constitutional commitments and civilizational inheritance simultaneously.

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