

Re-Writing *on crime and punishment*: A comparison; with Archaeological evidence in Sri Lanka

A.A Bandaranayake¹, K.G.N.U Ranaweera²

¹Postgraduate Institute of Archaeology, University of Kelaniya, Sri Lanka

²Department of Criminology and Criminal Justice, University of Sri Jayewardenepura, Sri Lanka

Abstract: History is intangible and unchangeable. Historical shreds of evidence draw lines from past to the present with evolutionary changes occurred in society. The societal views and the implemented systems in a respective society could differ from another and be recognized as modern than the other. This paper examines the early archaeological evidence on crime and punishment in Sri Lankan context and tries to compare with the accepted system as the pioneering ideologies which introduced far back from the Sri Lankan archaeological pieces of evidence aroused with the "Vēvālkātiya pillar inscription" in the period of the King IV Mahinda (circa 1026-1042 A.D.). Although Cesare Beccaria (1738 – 1794) and Jeremy Bentham (1748- 1832) introduced the specific deterrence concept regarding the "free will" in 1764 with the "essay on crime and punishment", Sri Lankan history indicates a similar deterrence practice before 722 years. Swiftness, certainty, and severity were known as the unique characteristics of punishment by classical schoolers, and Vēvālkātiya pillar inscription included these as it is and more descriptive ideas on steps can be taken for an effective deterrence could be identified. This purposive comparative study revealed that the methodological discussion regarding the crime and punishment and the implementation were done in Sri Lanka and it runs far back to the year 1026 to 1042 A.D., which addresses the history beyond accepted as the pioneering discussion on crime and punishment.

Keywords – Crime, Inscriptions, King IV Mahinda, Punishment, Vēvālkātiya

I. INTRODUCTION

Deviance behaviours reveal an abnormal side of society. Although the first criminal incident in the universe is yet to be identified; hypothesis regarding the same era which crimes were considered as social problems could be identified via historical evidence. Excepts the legends disseminated verbally, archaeological evidence can be seen regarding the societal reactions towards crimes. As the reaction appears after the action occurred, opinions on occurring crimes can be taken before to the evidence of punishments. Some early theories of criminology explain the factors affecting criminality and the punishments assigned. The first explanation related to a supernatural explanation was beyond the scientific base. The punishments given were brutal and unfair. As the invisible spirit settled in the human head to mislead the person from normal behaviour to the criminality;

the skull was trepanned to take it out. As the revenge was the purpose of punishment; a considerable weight for the life of the "culprit" or the "might be the culprit" was not given. The first written inscription regarding crime and punishment in the world was with the Babylonian King who ruled from 1792 to 1750 B.C.E. After Plato and Aristotle, St. Thomas Aquinas, Cesare Beccaria, and Jeremy Bentham with the classical school were emphasized the crime and punishment until Adolph Quicklet and Cesare Lombroso arose the statistical and biological explanations. This paper reveals the parallel and unseen discussion on crime and punishment in the Sri Lankan context concerning "Vēvālkātiya pillar inscription" in the era of King IV Mahinda (1026-1042 A.D).

II. METHODOLOGY

As the research based on the available inscriptions and the former theoretical explanations, a descriptive literary review was conducted. "Vēvālkātiya pillar inscription" was observed and epigraph as it was taken as the significant source. A Purposive and a comparative literature survey was directed to draw the conclusions up.

III. RESULTS AND DISCUSSION

Criminological theories kept more attention regarding the "causes of criminality", and the criminal law emphasized the punishments assigned to the culprit. Combination of both theoretical explanation and the law could draw a complete picture of a "crime"; as the factors affecting criminality and the punishments could be revealed the contemporary social background which leads to a criminal from an ordinary man. Tangible historical evidence regarding the "full picture of crime" runs to the 1792 B.C.E.

The Code of Hammurabi was a set of legitimate points of reference for diverse sorts of violations of law. It is the origin of the judicial illustrations of the "innocent until proven guilty" which included in each civilized legal procedure in the world. The Code of Hammurabi included disciplines based on the criminal's age, social course, and sexual orientation. According to the code of Hammurabi, in case a wealthy man was found guilty of robbery, he would be charged a fine than if a slave were found guilty of a robbery. Then again, the discipline for murdering a wealthy individual would be distant

more extreme than for murdering a slave. Although discrimination can be identified, "the complete picture" reveals the social background of the era. As slavery existed in the period, human rights were not taken into consideration, but the social class did. With the immediate social condition existed, and unfair (in the present day) but a logical punishment assigning method can be recognized in the code. Although the "assigning method" was logical for a certain extent, the punishments can be amazingly brutal since those depended intensely upon the laws of revenge, or "an eye for an eye". So, in case a man broke his colleague's leg, at that point punishment was to have his leg broken.

In contrast, Aristotle was explaining that punishments and responses to crime should be used as an opportunity to prevent others from committing crimes as when criminals receive punishment, it should be severe enough that it warns the rest of society not to commit the same crime while also reminding the criminal not to commit a crime again. Unlike Hammurabi's era, rational ideas and intellectual renaissance of Aristotle's period "punishment" has been considered as a crime controlling and preventing method.

Early Roman secularism considered criminal behaviours of individuals as a simple human characteristic while assigning and implementing the punishment as "a work of God". Nevertheless, later the Romans saw crime as an insult to society, and Roman Law was established to bring order to society. Roman Law was less concerned about pleasing religious deities and more concerned with ensuring society was safe, orderly, and fair.

Similarly, St. Thomas Aquinas explained in religious perspective in "Summa Theologica", that there was a God-given "natural law" that existed and that humans were naturally designed to do only good. If a human committed a crime, it was both an insult on God as well as society. He claimed that crimes negatively impacted both the victims and the criminals. The victim directly caused harm and the criminal as moving further away from God and losing their humanness. Aquinas declared "Since the purpose of punishment is the re-establishment of equality before the law, punishment can only be imposed by one authorized to apply the law in the name of the community; such authority may also declare, in a particular case, that punishment will not be imposed". Although modern laws are created with the compassionate of Aquinas contemporary religion-based, non-rational "God's will".

During the Enlightenment by the utilitarian and social-contract philosophers, Cesare Beccaria and Jeremy Bentham

introduced the most acceptable ideology on "crime and punishment". They claimed that "free will" makes a rational choice and select to do criminal acts due to greatest pleasure and least pain. As the offenders are rational, they weigh up the costs, and thus we ought to make obstructions which marginally exceed what would be gained from the crime. Typically, the reason behind the punishment being seen by classical scholars such as Beccaria and Bentham as futile since there would be no obstruction. In any case when considering murder, as Bentham moreover accepts, in case the seriousness of the discipline ought to somewhat exceed the crime that points doubtlessly capital punishment ought to be utilized, there does not appear to be any more grounded an obstruction to other offenders considering of undertaking the same criminal conduct, than seeing another being killed due to their actions.

Beccaria published *Dei Delitti e Delle Pene* ("On Crimes and Punishments") in 1764, arguing for the necessity of a reform in the criminal justice system by referring not to the harm caused to the victim, but to the harm caused to society. According to Beccaria, punishment should be *swift*. Means the offenders need to associate the punishment with the violation of the law, so the punishment should be assigning sooner the offence is committed. It should be *certain*; offenders should believe that if the crime committed, punishment is there. Punishment should be *severe*, means punishment must be severe enough to outweigh any pleasure or reward the offender will receive from committing the crime. Same time Beccaria emphasize a new concept called "*Specific Deterrence*" which indicate that the punishment will stop an offender from re-offending. In this case, the punishment is designed to convince the specific offender not to offend again.

According to the existing written evidence, Classical schoolers are the ideologists who elucidated the logical explanations on criminality and inventors of the punishment methods to create social order by controlling and preventing crimes. It was a historic milestone, and the world believes that the Beccaria and the classical schoolers were the pioneers of introducing a civilized crime deterrence approach which based on punishment.

On the contrary, Sri Lankan history draws a complete picture "on crime and punishment" in the 10th and 11th centuries with written evidence. The pillar inscription of Vēvālkātiya enlightens an idea on civilized punishment methods with the purpose of special deterrence. Although the classical schoolers made conclusions in 1764 Vēvālkātiya pillar inscription was written in the period of King IV Mahinda (circa 1026-1042 A.D.) who ruled Sri Lanka.

Figure 1 : Vēvālkātiya pillar inscription (Photograph)



Source: Field Visit, 18/08/2020

Figure 2 : Vēvālkātiya pillar inscription (Stamp page)



Source: Department of Archaeology – Exploration and documentation division

"Vēvālkātiya" is a small village in Pahala Kanda Thulana in Kanda Korale, about twenty-one miles to the north-east of Anuradhapura, Sri Lanka. Dr Goldschmidt, who visited the place in 1875, was the first to bring to notice the existence of the inscription. It was subsequently examined by Dr Muller, who in 1883 published a rough transcript with a short introductory note, but no translation. Mr Bell, on inspecting the slab in 1891 found it inscribed on one side only and considerable work.

This inscription illuminates not only an essay on crimes and punishments but also the devolution of judicial power, responsibilities of the citizen and the government officers which cannot be assigned to another party.

Inscription introduces the jurisdictions using the word "*dasa gam*" which means "a cluster of ten villages". Although the contradictions regarding the word "*dasa gam*" were created within Sinhala linguistics experts as word "*dāsa*" could be used for "slaves". However, contemporary evidence does not support for the slavery in Sri Lanka, expertise archaeologists and epigraphers identified "*dasa gam*" as a bunch of ten

villages which were separated due to decentralization of the judicial power. Same time the inscription pointing a person who bears the authority of contorting the "*dasa gam*" as "*dasa gam nayaka*" which means the "head of the cluster of ten villages".

6. *Pak davas uturu pasā Amgam-kuḷiyehi Kibi-(nisa)-*
7. *–mhi Demeḷ-Veher pamaṇin dasa-gamaṭ ekeka*
(Vēvālkātiya pillar inscription - 6 and 7 stanzas)

Moreover "*raja sabhawa*"; the "royal council" which consisted of King and royal ministers to impose the law and "*Rajakeeya emathi*", the "royal minister", who announced the imposed law were introduced through the inscription while the head of the cluster of ten villages (*dasa gam naayaka*) was assigned all police and judicial powers within the jurisdiction".

42. *n ā raj-sadhāye hindnā Goḷuggamu Ra(k)sā(im)*

43. *Ku(ḍā)-senu isā Meykāppar Kuburgamu Lok(o)-*

44. *-hi isā Kātiri Agbohi isā Kundasalā Ara(yan)*

45. *ātuļāvā metuvak sam-daruvan-visin me vāvasthā karanu ladi*

(Vēvālkātiya pillar inscription - 42 to 45 stanzas)

These stanzas explain the nature of systematic crime controlling power assignment in Sri Lanka in the 11th century. Same time the *Vēvālkātiya inscription* elucidates regarding the significant crimes against person and property as "murder", "injury" and "burglary".

6. *Pak davas uturu pasā Aṅgam-kuļiyehi Kibi-(nisa)-*
7. *-mhi Demeļ-Veher pamaņin dasa-gamaṭ ekeka*
8. *nāyakayan kibi-gam āpā dun nāyakayan kuḍī-*
9. *-n mehi ātuļattāk tānā kuhivaku marā ke (ṭuva)*
10. *Kaṇḍa paļā sora-kam kaļa tikā koṭ genā dasa-gāmā ā-*
11. *-ttan hindā vicārā upan dāyaṭ pā hāki-se liyā*
12. *tabā māruvehu marā paṭvanu koṭ isā kaṇḍa-paļā soru-*
13. *-n gat ayatiyen niyata-kaļāk ayatiya (hi)mi-*
14. *-haṭ gena dī elvanu koṭ isā tirā no kaļa dasa-gā-*

(Vēvālkātiya pillar inscription - 6 to 14 stanzas)

Inscription introduces,

1. Punishments assigned for each crime
2. Responsibilities of the officers.

Murders should be punished with capital punishment, and officers should find the culprit within forty-five (45) days from the crime occurred. If officers were failed to find the culprit within the period, they should be given a fine of "*ran kalang 125(625g of gold)*" (Kalang (a measurement of weight) = 5g); to the King. If it was a "burglary" culprit should remember the property to the victim and burglars should be assigned the capital punishment.

14. *haṭ gena dī elvanu koṭ isā tirā no kaļa dasa-gā-*
15. *-mā āttan pansālisa davasekin soyā genā paṭ-*
16. *-vanu koṭ isā soyā no gata dasa-gāmin ek-*
17. *siya pas-visi kaļandak ran radolaṭ denu koṭ isā*
18. *no marā keṭuva div-milā panās kaļandak ran gannā*

(Vēvālkātiya pillar inscription-14 to 18 stanzas)

Culprits of "grievous injuries" should themselves be given 50 *ran kalang* (250g of gold) to the victim. Hence, they failed to compensate for the "*das agama*" should pay the same amount to the King.

18. *no marā keṭuva div-milā panās kaļandak ran gannā*
19. *koṭ isā no pohot ge-daḍ gannā koṭ isā tirā*

(Vēvālkātiya pillar inscription - 18 and 20 stanzas)

The modern concept of "aiding and abetting" was also included in Vēvālkātiya inscription. It was inscribed as "*ath pā mehewara*" in the inscription.

21. *-ṭ isā at-pā-vahalaṭ giyākugen daḍā panās kaļa-*
22. *-ndak ran gannā koṭ isā no pohot (ge)-daḍ gannā ko-*
23. *-ṭ isā ge-daḍ nāta at kapā paṭvanu koṭ isā ..*
24. *-vū daḍ sihin daḍ pere-sirit-se gam-laddan pamunu-*
25. *(laddan dedā) gannā koṭ isā mīvun geri-gon eļu-*

(Vēvālkātiya pillar inscription- 21 to 25 stanzas)

According to the present Sri Lankan penal code, a person abets the doing of a thing who instigates any person to do that thing; or engage in any conspiracy for the doing of that thing or; intentionally aids, by any act or illegal omission, the doing of that thing and when an act is abetted with the intention of the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequences of the abatement causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner, and to the same extent as if he has abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

As "aiding and abetting" is a punishable offence in the present society, the period of IV Maninda's also considered it as a crime. The abettor should be fined with "*ran kanang 50 (250 grams of gold)*" and if failed "*ath pa kepiima* (amputation of limbs)" was implemented.

As the early Sri Lankan society bared a rich traditional agricultural culture, buffaloes and goats were considered as holy symbols. If anyone killed buffaloes and goats, culprits were given capital punishment or commit theft of buffalo and goats; by deleting the identification, flexing mark of the animal, were assigned a punishment of "keep standing on a heated iron pair of sandals." If the suspect not proven as the guilt, he was "crushed" as the punishment.

25. *(laddan dedā) gannā koṭ isā mīvun geri-gon eļu-*
26. *-van māruvan marā paṭvanu koṭ isā no marā sorā-*
27. *genā giya niyata koṭ ovun ovun kasilā san-la-*
28. *-kuṇ obā harnā koṭ isa tirā no vat koṭā paṭva-*
29. *-nu koṭ isā bāhārin ārā vikunāna mīvun geri-*
30. *-gon eļuvan hāndinā āpā genā gannā koṭ isā*

(Vēvālkātiya pillar inscription -25 to 30 stanzas)

Furthermore, the Vēvālkātiya inscription delineates regarding the administrative intervention on crimes and by assigning "crime patrolling" or royal officers.

36. (-pā) genā hindvanu koṭ isā no yedennak koṭ va-
 37. -n kenekun āta āpā gata-dā paḷamu-vū gāmā ā (tta-
 38. -n) paṭvannaṭ harnā koṭ isā me dasa-gāmā ā-
 39. -ttan me kī tāk dāyin ikmā vāṭuṇa havurudu
 40. havurudu patā illannaṭ giya raj-kol sam-da(ru-
 41. van ke .. kāva)tnā koṭ vajāḷa ek-tān samiye-

(Vēvālkātiya pillar inscription -36 to 41 stanzas)

IV. CONCLUSIONS

Accept the invisible spirits and criminality, criminological theories and early explanations on "Crime and punishment" was established with the "Hammurabi's code" first and it was considered as an uncivilized piece of work which focused on the "purpose of revenge" than the "maintaining the social order". The civilized and most appropriate procedures on crime and punishment were elaborated by the classical schoolers in 1764 by Cesare Beccaria and Jeremy Bentham. Classical schoolers emphasized the crime deterrence through the punishment, and the characteristics of the punishment should be included.

Although the world accepted classical schoolers ideas as the new dimension of the criminological history, before 1764, a rich and acceptable civilized evidence regarding crime and punishment can be identified in Sri Lankan context with the "Vēvālkātiya inscription" built in the period of the Sri Lankan king IV Mahinda in 1026-1042 A.D.

Bentham's explanation and the characteristics of punishment be it is in some cases and far more than it in Vēvālkātiya inscription. According to *Swiftiness* of the punishment was known as one of the compulsory characteristics if it combined with the deterrence purpose. In Vēvālkātiya inscription, the justice authority was assigned an exact period to catch the culprit. It indicates the responsibility of the authority while giving another punishment to the authority of a fine to the King; the responsibility has converted to another offence if it could not be fulfilled. This is the most pertinent evidence for the *Swiftiness* which Bentham explains after 722 of Sri Lankan written history.

"*Certainty*" was considered as the next characteristic of punishment by Bentham. The arguments of certainty were done by the Sri Lankan king IV Mahinda via Vēvālkātiya inscription by inscribing in the stone. Unlike Hammurabi's code, the punishments were assigned regardless of social status. Not only certainty for criminals regarding the punishment of the criminal act; the victim on compensation to be possessed but also the charges of the responsibilities assigned to the officers were declared. Vēvālkātiya inscription indirectly defined the certainty of the punishment in trinity aspects than Bentham's assumptions made in 1764.

The "*severity*" which Bentham explains as the next factor related to the punishment also can be seen in Vēvālkātiya inscription. Although the civilized criminal justice system

should be adopted the objective of deterrence as Bentham emphasized, crime control and prevention should be focused while punishment assigning. The principal criminal incidents which directly violate human rights as murders, burglaries cannot be accepted in a civilized society. To show that disagreement towards the actions violates human rights; a reasonable punishment should be assigned. Capital punishment is appropriate in that scenario as the purpose of the punishment is beyond revenge.

Although the Sri Lankan history based on legends for a certain period, the written history is far behind the actual history. However, as the provable evidence based on written and existing archaeological monuments, a considerable gap between the written and non-written history should have existed. Acceptable written evidence called Vēvālkātiya inscription revealed a systematic judicial process and specific deterrence approach which implemented in the period of 1026-1042 A.D., in Sri Lanka before classical schoolers explanation on crime and punishment in 1764.

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