

## LUDWIK SKURZAK

### From the Sources of the Indian Law

The codes of the ancient Hindu law distinguish two different penances for manslaughter. A number of rules (A) prescribe death or ransom as punishment for murder while according to others (B) the murderer shall for a definite period of time live as an ascetic and in complete chastity.

#### A

Āpastamba Dh. S., I, 24 (SBE. II)

1. He who has killed a Kshatriya shall give a thousand cows (to Brahmanas) for the expiation of his sin.
2. (He shall give) a hundred cows for a Vaisya,
3. Ten for a Sudra,
4. And in every one (of these cases) one bull (must be given) in excess (of the number of cows) for the sake of expiation.
5. And if women of the (three castes mentioned have been slain) the same (composition must be paid).

Baudhāyana Dh. S., I, 18 (SBE, XIV)

18. In case (a Brahmana) has slain a Brahmana, has violated his Guru's bed, has stolen the gold (of a Brahmana), or has drunk (the spirituous liquor called) Sura, (the king) shall cause to be impressed with a heated iron the mark of a headless trunk, a female part, a jackal, (or) the sign of a tavern on the forehead (of the offender) and banish him from his realm.

19. If a Kshatriya or (a man of any) other (lower caste) has murdered a Brahmana, death and the confiscation of all his property (shall be his punishment).

#### I, 19

1. For slaying a Kshatriya (the offender) shall give to the king one thousand cows and besides a bull in expiation of his sin,

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\* This paper has been designed for the Memorial Volume of late professor Stanisław Schayer.

2. For (slaying) a Vaisya one hundred cows, for (slaying) a Sudra ten; and a bull (must be) added (in each case).

## B

## Āpastamba Dh. S., I, 24

11. He (himself) shall erect a hut in the forest, restrain his speech, carry (on his stick) the skull (of the person slain) like a flag, and cover the space from his navel to his knees with a quarter of a piece of hempen cloth.

## Baudhāyana Dh. S. II, 1

2. The murderer of a learned Brahmana (shall practise the following vow) during twelve years:

3. Carrying a skull (instead of a dish) and the foot of a bedstead (instead of a staff), dressed in the hide of an ass, staying in the forest, making a dead man's skull his flag, he shall cause a hut to be built in a burial-ground and reside there; going to seven houses in order to beg food, while proclaiming his deed, he shall support life with what (he gets there), and shall fast if he obtains nothing.

8. (For killing) a Kshatriya (he shall keep the normal vow of continence) during nine years,

9. (For killing) a Vaisya during three (years),

10. (For killing) a Sudra during one year,

11. Likewise for killing a woman.

## Manu XI (SBE. XXV)

73. For his purification the slayer of a Brahmana shall make a hut in the forest and dwell (in it) during twelve years, subsisting on alms and making the skull of a dead man his flag.

79. Having shaved off (all his hair) he may dwell at the extremity of the village or in a cow-pen, or in a hermitage, or at the root of a tree taking pleasure in doing good to cows and Brahmanas.

82. He who thus (remains) always firm in his vow, chaste, and of concentrate mind, removes after the lapse of twelve years (the guilt of) slaying a Brahmana.

The rules of the A-group resemble the prescriptions and penances for the same crime included in other codes of ancient laws. For instance in the Babylonian law, in the Code of Hammurabi, No. 195 ff. (*Die Gesetze Hammurabis* übers. v. H. Winckler, Leipzig 1903) and in Hittite laws (*Hethitische Gesetze*, übers. von H. Zimmern, Leipzig 1922) No. 1 ff.



Another is the origin of the penances for killing prescribed by the rules of the B-group. There the following elements are to be found: 1. isolation from the society, 2. living in sexual chastity.

We find analogical rules in Australasia, east of India. In Australasia as in India the murderer is impure. All contacts with him are prohibited for a certain period of time. Even his nearest relations being afraid of the vengeance of the killed man's ghost avoid him. He must live in separation, any sexual intercourse is forbidden to him. For instance, on the island of Timor the chief on returning from a campaign must live alone for a time and is forbidden to touch his wife. In New Guinea among tribes living at the mouth of the river Wanigela a man who killed another is impure and has to pass through various ceremonies before he is allowed to return to the society (F r a z e r *Der Goldene Zweig*, Leipzig 1928, p. 311). On the island of Pur men who touched the corpse (for instance buried it) are tabu, must live apart from their village and must not have any intercourse with women for the first four days. (E i l e r s, A: *Westkarolinen*. I. Halb. — Sangosar, Pur, Meir. Hamburg 1935, p. 232.

It is in this Australasian cultural sphere that the genesis of these B-paragraphs of the Hindu law is to be found.