

Kautilyan Law and Indian Law: A Critique

Dr JVN Mallikarjuna¹, YVN Suneetha²

¹Associate Professor of English, Govt. City College, Hyderabad

²Lecturer in English, Govt City College, Hyderabad

ABSTRACT

If we closely observe the present legal system in India, we understand that most of the contents and laws are based on Kautilya's Arthashastra. The very object of the Arthashastra is to comprehend and control the social life internally and also to determine the sovereignty in whole of India externally. Kautilya's Arthashastra provided a valuable basis for law. Kautilya demonstrated an extremely vital imperative: governance, polity, politics and progress have to be linked to the welfare of the people. Interestingly, closer to recent times, Abraham Lincoln said, "*Democracy is for the people, by the people and of the people*". He held that laws should be adapted to changing conditions of time and place. He believed in a just and realistic rule of law. His definition of a state was one which had power and wealth and hence he put property rights and protection of wealth as one of the important themes in his jurisprudence. The Arthashastra classifies legal matters into civil and criminal. He thinks that justice is an important constituent of sovereignty and it needs to be preserved by the State and the Ultimate responsibility lies with the King. Kautilya is well known for his secular and less orthodox. He made clear distinction between religion, politics and economics and based on his treatment on scientific reasoning.

KEYWORDS: Arthashastra, Civil law, Criminal law, Dandaniti, Universallaw, Criminal justice

INTRODUCTION

Two thousand four hundred years ago, Kautilya compiled the Arthashastra. The Arthashastra endured the test of time and it has since withstood the test of credibility. Kautilya demonstrated an extremely vital imperative: governance, polity, politics and progress have to be linked to the welfare of the people. Interestingly, closer to recent times, Abraham Lincoln said, "*Democracy is for the people, by the people and of the people*". The Arthashastra's resonant theme holds even truer today and it is the upholding of this principle that stands at the core of attaining development. Kautilya's Arthashastra provided a valuable basis for law. It contains useful insights about law. He did not believe that there was one Universal Law which is applicable to all conditions and all times. He held that laws should be adapted to changing conditions of time and place.

Kautilya's ideologies on state, statecraft, ethics and laws are very realistic and vastly applicable in today's context. Kautilya's work is then seen in the light of today's legal system. He was a proponent of a welfare state. He believed that for the prosperity of a state, the state must be devoid of internal conflict and the King should be in control of the state.¹ to maintain this internal peace. He believed in a just and realistic rule of law. His definition of a state was one which had power and wealth and hence he put property rights and protection of wealth as one of the important themes in his jurisprudence. Kautilya also attaches great importance to human rights. He shows a deep understanding of criminal justice.

The Arthaśāstra classifies legal matters into civil and criminal and it specifies elaborate guidelines for administering justice in terms of evidence, procedures and witnesses. Furthermore, Kauṭilya strongly believed in Dandaniti, though he maintained that penalties must be fair and just, and proportionate to the offence committed. Kauṭilya also was a reformer where he thought punishments could reform a person and hence a society. His devotion to social structure was so strong that he thinks that Brahmins need to be punished less by only exiling him and not torture him. This unequal social justice was in itself injustice but so was his belief he attaches great importance to Dandaniti which includes, protecting property, acquiring property, augmenting them and distributing them. He thinks that justice is an important constituent of sovereignty and it needs to be preserved by the State and the Ultimate responsibility lies with the King.

Kauṭilya stated the king shall provide the orphans (bāla), the aged, the infirm, the afflicted, and the helpless with maintenance. He shall also provide subsistence to helpless women when they are carrying and also to the children they give birth to. Furthermore, during Kauṭilya's time, the king had responsibility for food security. Agricultural stocks "were kept in the Royal granaries to ward off public distress, and the king directed the retention of half the annual produce for the relief of distress; and provided poor persons with food and seed corn to enable them to start farming. In addition, various public activities, such as the building of water reservoirs and the construction of irrigation works, were a part of policy to avert famines. Where the State did not directly undertake such works, it provided subsidies to those who did.

Kauṭilya makes a distinction between a virtuous king who recognizes Dharma and rules in accordance with laws and customs, public opinion, ministers, purohita and a tyrant, his aim being to have a powerful but unrighteous king administering a strong and benevolent state.

Kauṭilya was a confirmed realist. Kauṭilya is well known for his secular and less orthodox. He made clear distinction between religion, politics and economics and based on his treatment on scientific reasoning. The most important are – theory of kingship, sovereignty, position of king / sultan, principles of ideal administration, theocratic, secular tyrannical, despotic, and welfare nature of the state, classification of bureaucracy, administration of justice, sources of law, crimes and punishments, economic principle, agriculture, industry, trade, labor and their wages, market organization and price-control measures.

The greatest Indian exponent of the art of governance and duties of kings, ministers, officials, diplomats, military organizations, spy system, concerning war and peace and international relations etc., He is always devoted him to the work of the management of state-affairs. He is a faithful advocate of industry and is not fatalistic. His pragmatic approach, to politics and economic management is one of his specialties as one of the greatest materialist thinkers of his age. He was the prime minister of Chandragupta Maurya, but in spite of it, his standard of living was very simple.²

Kauṭilya was well aware of the importance for the efficient operation of the State and economic development of what is described today as good governance. Furthermore, it can be inferred that he was well aware of the value of capacity-building amongst public servants, a 'catch-phrase' commonly used today as a rationale for many foreign aid projects to less developed countries. To some

extent, Arthaśāstra can be regarded as a manual for capacity building in the public service in the Mauryan period.

The treatise on political theory and practical governance is organically called Danda-Niti or the principles of the Government or Arthaśāstra or the code of Common-wealth. “Artha” means a territory with human population. The code of Artha is a kind of code dealing with the means (Upaya), Sama, Dama, Danda and Bheda for the acquisition and growth of that territory. Hence, the basis of the philosophy enshrined in Arthaśāstra, breaking the tradition, is the importance of Artha in the life of men, the peace and prosperity of the state. This is theme around which his philosophy of Arthaśāstra revolves round with the elaborate laws.

The Kauṭilyan sovereignty may be called pluralistic much because of the welfare nature of his state. The King is to regard himself as an agent of the people and have to abide by the will of the people and also have to abide by law. Kauṭilya says, “The king is the state (raj-rajyam)” The king, therefore, is real pivot of body-politic and there by the real representative of State and its authority.

The Arthaśāstra fully recognizes the trivarga, dharma, artha and kama, although its main subject is only artha. He fully recognizes the importance and authority of dharma, nay, perhaps even holds it supreme. This law may well be characterized as comparatively secular, since his main concern is not with dharma⁵. The whole conception of Titles of Law is possibly borrowed by Manu from the Arthaśāstra. In the main, the Manusmṛti treats the whole subject-matter of law in the same order as the Kauṭilya.

The legislative powers of a king have been referred as Chatuspadah by Kauṭilya which includes the various sources of law, enactment of Rajshasana, and, implementation of justice on the basis of Dandaniti. These also constitute the judicial power of a king through the organs of Kantakashodhana and Dharmasthiya (Criminal and civil) courts. Thus, according to Kauṭilya the king is the embodiment of the supreme executive, legislative, judicial, military, revenue, social, economic, welfare authority in the state and Government, the achievement of the aims enshrined in the philosophy of Yogakshema.⁴

The Kauṭilyan statement that “*Whatever of the property of citizens is robbed by thieves, the king cannot recover, shall be made good from his own pocket.*” According to the Mahabharata and the Manusmṛiti, the people have the right to remove or depose of erring king. Kauṭilya instructs the king to be one with people. The supreme authority of a king lies with his unlimited authority of ‘Danda’ (or punishment). But the Danda should not be indiscriminately used by a king in contravention with the Dharma established by Dharmasāstras. It may be noted here that even the essence of the divinity does not give a king any immunity from the Dharma or the established law.

Arthaśāstra of Kauṭilya mentions wide ranging, civil and executive powers and functions of the king, who is the apex of all powers of the state and is no less than steering wheel of the ship of the state. He has the right to delegate his powers and authority to his officials under his right to delegate his powers and authority to his officials under his order and name. The king is to fulfill his obligations

towards the safety of the princes along with his own obligations towards the safety of the princes along with his own safety.

The royal decrees (similar to modern day Government ordinance) which they promulgated were generally not new law, but orders while referred to special cases. The Dharma and the established customs were usually looked upon as inviolable in ancient India and the King's commands were merely an application of the sacred laws⁷.

Kauṭilya in his terminology 'Yogakshema' stresses upon the preservation of the right of people as a fundamental spirit behind the ideal of sovereignty. If the 'Yoga' means the preservation of the people, the 'Kshema' means public welfare, hence sovereignty of Kauṭilya revolves round the principle of the preservation and Kauṭilya's theories of sovereignty, therefore, is more close to Aristolian than Hobbesian.

In the Kauṭilyan state and sovereignty virtuous character, attained through training and discipline and restraints prescribed on the political, religious, social, legal and judicial, economic, ministerial and administrative, public opinion and assemblies are some of the checks. The erring king is to be punished under Kauṭilyan state and sovereignty. Dhanda is the supreme elements of Kauṭilyan Sovereignty and it is used within the established law, while Danda or terror has been used just like a sharp sword against officials as well as general people.

On the basis of Arthaśāstra, the king is not, as an evil, which should not be allowed to interfere with the life of the individuals. When a king carries out, the obligation of protection of the persons and the property, he goes to the heaven, states a Kauṭilya. Kauṭilya described the ways and means of protecting the people from anti-social elements, like thieves, decoits, murders and abandon human passions, viz., lust, anger, greed, vanity, haughtiness, and acts against deceitful artisans, traders, inefficient and corrupt Government departments and natural calamities. The king protects the subjects by the help of 'Danda' by punishing the evil doer. Kauṭilya Explains that morally a strong king not a ruthless despot who harasses the people at his will and pleasure, is to govern the people. Kauṭilya, the king's powers and functions are to be used for economic, social and spiritual welfare of the people.

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Usually, ancient Indian king had no legislative powers in himself and the same was done through a representative body like Sabha, but since the law in India as elsewhere was based upon metaphysical basis of Dharmaśāstras, hence he has been left with almost no authority for its creation. The royal decrees which they promulgated were generally not new law, but orders while referred to special cases. The Dharma and the established customs were usually looked upon as inviolable in

ancient India and the King's commands were merely an application of the sacred laws. The Dharmaśāstras contain sections on secular law, both civil and criminal,

State and Government were given the duty to protect the people of the society and in that sense the sovereign was to be the chief administrator of law. In the pluralistic polity of the Dharmaśāstra period, the king functioned merely as an executive sovereign, carrying out the decisions of the corporations. He had no legislative power as he was under the obligation to preserve and to protect Dharma and not to create or enact it.

Kauṭilya in his Arthaśāstra considers it necessary to empower the king for the formulation of law. In this sense, Kauṭilyan king has, king for the formulation of law. In this sense, Kauṭilyan king has, even in limited sense, some original legislative powers to enact law. According to Kauṭilya 'Chatushpadha' or the four sources of law are Dharma (sacred law), Vyavahara (evidence), Charitra (history) and Rajashasana (edicts of the king). Kauṭilya has upheld the wide ranging powers of king's ordinances as Rajashasana, as per needs of the administration. The king is considered the actual arbitrator of law as an authority implementing Dharma and Danda.

Kauṭilya was famous for his analytical studies and authoritative advices which opened clues and provided radical answers both of civil administration and also of governance. Even today, in political thinking Arthaśāstra has a valued position. It is indeed a great surprise that Kauṭilya rose to such heights on his own efforts and the doctrines he collated for public administration and civil laws continue to lead scholars and administrators to keep the society running.

Kauṭilya is a realist and deals with duties, violation of which are regarded as crime and punished by the state prior to Kauṭilya, Law and religion were intermixed.⁷ The endless principles which still form the basis of law. It is a good means for introducing new opinions into our legal system.

Kauṭilya's Arthaśāstra is relevant for framing of new laws, modifying existing laws, bringing up laws and strengthening their basis in conformity with international trends and understanding. Kauṭilya discussed containing inter alia institution of rule ship, administration, law suppression of criminals, trade, industry, commerce, spying war, peace and foreign policy. Kauṭilya was inspired with a high social conscience. According to him, a ruler should do nothing to displease his people. Although he is supreme and sovereign, but he is not a dictator. Rule ship exists to serve the society and people.

Kauṭilya made valuable contributions in the fields of maintaining law and order, prevention of crimes, detection of criminal youths, arrests on order, prevention of crimes, detection of criminal youths, arrests on suspicion punishments for receiver of stolen property, attempt of commit an offence, eliciting confession from suspects by questioning, interrogation or by physical torture, post-mortem on sudden deaths etc.

The Arthaśāstra, is a genuine ancient document, giving on the whole, as faithful a picture as a piece of its class can of what once largely obtained in social and political practice. Kauṭilya's system of law has many and various kinds of legal procedures. The system of agriculture taxation described in the Arthaśāstra is parallel with the one now in vogue in Central India

Third Book, called the Dharmasthiyam is confined to the Civil Law in the Kauṭilya, i.e. its third Book, called the Dharmasthiyam. But let it be explained here that the terms ‘civil’ and criminal are employed here akin to modern law, but in a very different one: they are roughly the renderings of Dharmasthiya and Kantakssodhana respectively.

Civil laws in Kauṭilya’s system consist of the following heads of legal action:

- (1) Laws of contract
- (2) Laws of marriage and conjugal relation
- (3) Laws relating to property of women
- (4) Family laws relating to partition and inheritance of male property
- (5) Laws relating to landed property
- (6) Laws of debts and deposits
- (7) Laws of service and partnership
- (8) Laws of gifts, purchase and sale
- (9) Laws of civil injuries; and
- (10) Gambling and miscellaneous subjects.⁸

Kauṭilyan law does not profess to aim at redress in Dharmasthiya cases or at punishment only in Kantakashodhana ones. In a good number of Dharmasthiya cases the wronged party is redressed, by means of compensation or restitution, but not in all. Besides, the idea of punishing a wrong-does is ever present, be it a Dharmasthiya or Kantakashodhana issue. In fact, the king is enjoined, strongly and frequently, not to let a guilty person go unpunished. The fines imposed go to the state, irrespective of a case being Civil or Criminal. Yet, in a loose sense, the Dharmasthiya suits are associated mainly with the rights and obligations existing between two individual citizens.

Kantakashodhana trials seek to ensure general protection for the subjects of a state; so Kantakashodhana is concerned with repression of evil-doers by police action and heavy penalties. The trials at Kantakashodhana Courts are, however, not necessarily instituted by the state. Some of them are so instituted in the sense that the prosecutions are launched on the evidence of state. Further, the offences of what the Indian law-givers call violence, Assault by Words and Assault by Force would be described as upon as cases of Civil Injury.

A characteristic feature of the Kauṭilyan code is that its rules possess a certain flexibility same as modern legal system. Apart from the law of procedure, evidence, inheritance, gifts, sale and purchase, and Civil Injuries, where the modern laws compare favorably with the Arthaśāstra, in other respects the latter is definitely richer than the former, more especially so in the laws relating to the institution of contracts, conjugal relations, landed property, including irrigation-works, slavery and join undertakings.

The king exercises political authority the official advised him in the administrative matters. The army and the treasury taken together combined to constitute the well-organized body politic. Kauṭilya is of opinion that all the elements are inter dependent and they must not have their separate existence. To him, these elements have taken together, combined to make a real state and actual sovereignty

Kauṭilya, the king's powers and functions are to be used for economic, social and spiritual welfare of the people. In the list of Kauṭilyan royal writs are eight in number, like the five kinds of these modern writs, these are (1) habeas corpus (2) mandamus (3) quo-warranto (4) prohibition and (5) certiorari includes Kauṭilyan writs of (1) Command (2) information (3) guidance (4) remission (5) license (6) gift (7) reply and (8) general proclamation Supreme arbitrary power indicates the legislative authority of the king. The administrative orders makes king a legislative authority. Kauṭilya made the king not only a source of law but makes his 'Edicts' as overriding, even on established Dharma. Whenever there is disagreement between Sanistha and Dharma or between Vyavahara and Dharma, the matter shall be settled in accordance with the dharma," as in the eye of the king and the need of the hour.⁹ Kauṭilyan king has an engine of law and his command and is not a figure-head. It is Kauṭilya who makes a revolutionary break with the past by pronouncing the supremacy of Equity or Rajashasana over the Dharma or Law.

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