

Administration of justice and applicability of Deterrent theory of law in relation to Kautilya's Arthashastra

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Abstract: *The Kautilya's Arthashastra addresses the economic aspects of statehood in the colossal Mauryan Empire which covers the aspects of Law and Justice. The Arthashastra converges juristic approaches to the modern legal jurisprudence, which the latter alienates the legal principles that Kautilya tables in Arthashastra. The juristic principles propounded by Kautilya in the Arthashastra collide with the modern system of jurisprudence and present a similar theory while remaining correlated despite being from a different time period. The article provides a bird eye view of the concepts that Arthashastra provides, which is drafted within significant principles in modern jurisprudence, such as Deterrent Theory of Punishment, Rule of Law and stated through various laws of precedence as pronounced by Courts in India. The proposed outcome is to create relevance of Arthashastra as a significant legal jurisprudence in application exploring beyond its popular economic aspects and giving insights into it.*

Keywords: *Deterrent, Arthashastra, Kautilya, Chanakya, Punishment, Law, Jurisprudence*

Introduction: The general theory of Punishment during ancient times was largely deterrent in nature, which seeks to create fear in the mind of the criminal with the scope to defuse any future attempts towards commitment of such crimes. The nature of punishment in its own design briefly aims to discourage crime in its inception and reduce the nature of its occurrence. As such, the design of punishing offenders committing crime would have brought an ultimate end to crime itself. However, this design neither qualitatively nor quantitatively saw a possible end to it, rather a series of developments was accepted as part of Criminology and theories of punishment were made significant in this development. The common theories of Punishment includes the much practice of Capital Punishment in an inclusive system of deterrent theory as a pursuance towards preventive theory of punishment. The relevance of Arthashastra was parallel to the modern use of deterrence. Despite the modern penal system embellishing the Reformatory Theory Of Punishment, however, the Kautilyan Arthashastra was rather descriptive and accurate in addressing the penal system required during that time. The Kautilyan Arthashastra (Economics) is also an all inclusive Dandaniti (the science of punishment).

Kautilya's Arthashastra and rule of law: One of the significant quotients to the Legal system today is the British notion of "Rule of Law" by A.V. Dicey which is embedded in the legal system in India today.

The Rule of Law presents that the source of law is the rights of the people. There are many different definitions for the Rule of Law, whether that is between nations or legal traditions. One of the most common definitions in the UK was outlined by Professor A.V. Dicey in 1885 who broke it down into three concepts: No man could be lawfully interfered or punished by the authorities except for breaches of law established in the ordinary manner before the courts of land No man is above the law and everyone, whatever his condition or rank is, is subject to the ordinary laws of the land The result of the ordinary law of the land is constitution. (Professor A.V. Dicey “Introduction to Law and Constitution (1885)”

This is in concurrence to the Arthashastra as it mentioned Rule of Law is superior to the King and provides a resolution to the conflict by codified law, The Rule of Law presides as giving authority to the citizen the sense of security of their life and welfare of the people reliving the King, making law as the primary guarantor to its citizens. [1.5.2].

The Kautilyan Arthashastra states that administration of justice will be based on Dharma (truth), Evidence (witness), Custom (the tradition accepted by people) and Royal Edicts (law as promulgated).

Arthashastra conceptualizes that a king who executes justice in accordance with Dharma, Evidence, Custom, and Written Law will be able to rule the entire globe. [3.1.43] This provides a similar analogy to Albert Venn Dicey in his book “Introduction to Law and Constitution (1885)” mentioned, the first element “Rule of Law” which states that no man shall be punished except for breach of law. Arthashastra codified that the king will administer justice in case of violation of written law.

This Kautilyan principle provides that this world is only protected by the power of punishment when it is used impartially, proportionately to crime, and regardless of whether the person being punished is the King's son or an enemy. It precedes the Dicey's element of “Rule Of Law” which provides, That law must be equal for all citizens, rich or poor, high or low etc. [3.1.42]

Kautilya's Arthashastra elucidated that when the Shastras and the written law based on dharma are at odds, the written law shall take precedence. It is a significant parallel to Article 14 of the Constitution of India “Equality before Law” which emphasizes; The Constitution Of India is the actual source of individual's Rights. This adds up to the review of the Constitution, in this case written law, which prevails as the source of individual rights and takes precedence over any other statute. [3.1.45]

A.V. Dicey's Rule of Law which rather influences the Constitution is the result of Rights of the people. The concept under the Constitution of India is ultimately similar to principles laid down by Kautilya's Arthashastra which represents supremacy of Written Law over individual rights.

Kautilya's Arthashastra on reasonable punishment:

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The Reformatory theory proceeds with the objective of punishment is to bring change to the offender through an individualization strategy. The main aim of reformatory theory is to reform any offender providing reasonable punishments and reinstate each person back as a rectified citizen of the society. LN Rangarjan in his book The Arthashastra elucidates Kautilya's view “punishment awarded must always be just, neither too lenient nor too harsh”, corresponding to Audi Alteram Partem ("listen to the other side", or "let the other side be heard as well"), ensures the upholding of the “Principle of Natural Justice” as per

Article 21 of the Constitution providing that any procedure for administration of justice shall be just and fair.

The applicability to Kautilya's principle can be seen on the transcripts of *Paniben vs State of Gujarat* "Turning to the sentence; sympathy is what is pleaded at our hands. We are clearly of the opinion that it would be a travesty of justice if sympathy is shown when such cruel act is committed. It is rather strange that the mother-in-law who herself is a woman should resort to killing another woman. It is hard to fathom as to why even the "mother" in her did not make her feel. It is tragic deep rancor should envelope her reason and draw her finer feelings. The language deterrence must speak in that it may be conscious reminder to the society. Undue sympathy would be harmful to the cause of justice. It may even undermine the confidence in the efficacy of law." [*Paniben vs State of Gujarat*, Mohan S. (J)]

In this case, the learned court emphasized that sympathy pleaded by the wrongdoer was trivial over the crime committed. Therefore, the judgment is taken with regards to the gravity of the crime committed and leniency is chosen accordingly. Similar principle was laid down by *Arthashastra*; "The prescribed penalties could be modified to take in account both the prevailing local conditions as well as the particular circumstances of the cases under trial."

This subjugates a void unexplored as the concept of prevailing and applicable jurisprudence.

Conclusion:

The concept of deterrent theory of punishment is still relevant alongside the leniency that the reformatory theory of punishment emphasizes. Where the principle of Reformatory mode of punishment paves a way for first time offenders and believes in second chances to any first-time offenders, the history is beyond secrecy to the concept of deterrence that has prevailed as the most successful theory to have reduced crime in both Renaissance Period in Europe as much as the Mughal and British rule in India.

It is vital to the fact that Kautilya's *Arthashastra* presented a brief address to the science of punishment or *Dandaniti*.

The unexplored and vague interpretation in applicable jurisprudence from Indian Knowledge such as the *Arthashastra* remains pivotal to comprehend the need of the Indian legal system as it is prevalent and ever developing. This highlights the void of the scope of research and knowledge of Indian Legal Jurisprudence hidden under the blanket of spoken and codified thinkers of Europe and the West. For the consequential application of Capital Punishment as served as a deterrent, it yearns to debate and discussion over its use to deprive individual of Article 21 "Right to life and personal liberty", while discouraging heinous crime and in totality aspire to the prevention of crime itself.

The capital punishment as provided by the law is to be awarded in rarest of the rare cases. The procedure established by law for awarding the death penalty is reasonable and it does not in any way violate the mandate of Article 21 of the Constitution. Hanging by neck was a scientific and one of the least painful methods of execution of the death sentence. The death penalty has a deterrent effect and it does serve a social purpose, having regard to the social conditions in our country the stage was not ripe for taking a risk of abolishing it." (*Smt. Shashi Nayar vs Union Of India 1992*, K.N. SINGH, J.) The aspects of Kautilya's *Arthashastra* does not necessarily glorify Capital Punishment as a viable deterrent, but rather strengthens the understanding it shines on the matter as Legal Jurisprudence.

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