

Classification of Crimes and Corresponding Punishments in Kauṭilya's Arthashastra

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Abstract:

Since the earliest stages of civilization, crime existed as a part of human's social life, although not in the clearly defined manner as found in modern jurisprudence. These early understandings of crime differed significantly from its modern counterpart; they nevertheless give an idea of emergence of awareness and acceptable behaviour. In early societies, acts which were deemed unjust were understood primarily in relation to then existing societal norms, customs, ethics and religious belief, rather than through purely based on formal legal doctrines. With the emergence of organized state, however the societal advancement and when political bodies became more developed, along with it the rules for the regulations of conduct also acquired greater clarity. Owing to this social headway, economic and political development, the nature of offences also thus became more heterogenous. In response to these changing needs, laws gradually began to be codified. The earliest historical textual evidence of such legal codification in ancient India is evident in the Sutra corpus, notably in the Dharmasūtras of Āpastamba, Gautama, Vasiṣṭha and other sutra literature. Their ideas were further articulated in the later Smṛiti literature, especially in the works of Manu, Yājñavalkya and Narada smṛiti. However, apart from these dharma oriented legal works, we have another important stream of thought, represented by Kauṭilya in his well acclaimed treatise the 'Arthaśāstra', a text widely considered by scholars to owe its origination during Mauryan period c.321BCE- 185 BCE. Unlike these preceding texts, the Arthaśāstra, being an earliest treatise on a statecraft has approached crime and punishment, not entirely from the religious and moral expression, but also gives us a perspective from political necessity. In addition to other subjects, Kauṭilya has impressively touched upon every aspect in a detailed manner and subsequently laid down regulations pertaining to it, and accordingly prescribed the punishments for transgression. Thus, this paper aims to study the Arthaśāstra entirely from the legal standpoint, while chiefly concentrating on the various categories of offences, and its corresponding punishments.

1. Introduction:

India today, as a nation of 1.477 billion, and one of the world's oldest living civilizations, has inarguably made many contributions and conferred many ideas and knowledge upon humankind beyond Indian subcontinent, most famously, from the groundbreaking discovery of zero to advances in surgery. From the ancient to modern period of timeline, this nation has proudly witnessed the birth and glory of many erudite, which might be impossible to enumerate all the names and discuss upon it. Among the sea of such revered individuals, who have shaped the thought of Indian masses across centuries, Kauṭilya enjoys a significant

place. The name Kauṭilya, alias Cāṇakya and Viṣṇugupta is unquestionably one of such names, whose eminence cannot be disregarded throughout the pages of ancient Indian history, primarily known because of his magnum opus the Arthaśāstra. As much evident from the historical sources, the Mauryan Empire owed much of its prosperity and triumph to the virtuosity of Kauṭilya. The very definition of the Arthaśāstra was interestingly given by Kauṭilya himself in the concluding chapter of his book i.e., XV, wherein he states:

मनुष्याणां वृत्तिरर्थः, मनुष्यवती भूमिरित्यर्थः, तस्या पृथिव्या लाभपालनोपायः शास्त्रमर्थशास्त्रमिति।

This may be roughly translated as— ‘Artha is the means of subsistence (Vritti) of men; the earth (Bhumi) which contains mankind is also termed Artha; that science that treats of the means of acquiring and maintaining the earth is the Arthaśāstra, science of polity.’ A number of prominent figures were responsible for laying the foundation of this tradition. Among which Manu, Bṛhaspati, Usanas or śukra, Bhāradvāja, Viśālakṣa, Parāsāra, Pisunā (Nārada), Kaunapadānta (Bhīṣma), Vātavyādhi (Uddhava) and Bahudantiputra (Indra) are prominent ones and these ten figures are regarded as the early founders. While their contributions are significant and cannot be disregarded, but it was believed to be their successor Kauṭilya who produced the most authentic work on statecraft (Mukherjee B. , 1976, 15)

Ever since its manuscript was discovered in 1905 by a Pandita of Tanjore district, who handed over the manuscript to R. Shamashastry, who then in response, later published the entire text in 1909 and subsequently its English translation in 1915, thus followed by its translations in many languages, the text received an attention and became a subject of interest for many scholars, wherein some even famously compared Kauṭilya with Niccolo Machiavelli. Although not all necessarily subscribed to this approach, while taking into consideration of various factors, and differed in their viewpoint. In the similar ground, the date and authorship of the text also remained subject to debate. Fundamentally, the Arthaśāstra contains 15 Adhikaranas or books, 150 chapters, 180 Prakaranas and 6000 Slokas. With regard to the style and vocabulary of the text, then it follows a style, akin to Āpastamba, Baudhāyana, and other Sutra writers, along with it, we may observe that in a few instances, it also adopted a style of the Upaniṣads and later Brāhmaṇas (Mukherjee, 1976, 15). The text deals with wide array of subjects, and is primarily renowned for its detailed discussion of statecraft and governance. However, adhering to the specific focus of this present study, which is concerned with legal orientation, this study primarily focuses on book III, IV and partially I, II & V of the Arthaśāstra, which contain significant material, pertaining to law and punishment. The concept of crime, as we understood today has evolved over centuries. The notion of crime has never been static; it has evolved alongside political systems, religious beliefs and social structures. On a similar line, thus R.D Gupta aptly observe that the Hindu criminal Law has an evolutionary character and it represents various stages of development in human civilization. While the Vedic period was characterized by the composition of Vedas or Śruti literature viz., although Vedas themselves were not the proper Law book in the modern sense, however later legal texts derived its inspiration and guidance from certain ideals or injunctions laid down in the Vedas vis-à-vis the social life, dispersed in their various parts. When society was making its further advancement, concomitantly it also brought challenges in transit by such evolving society, thus a body of legal treatises was composed to regulate the rights and liabilities not only among individuals but also in the relationship between the sovereign and his subjects. Consequently, texts known as the Dharmasūtras and much later Smṛtis were composed. The work rendered in concise aphoristic form

were designated as Dharmasūtras, while those composed in metrical verse (śloka) were termed Smṛtis. Collectively these writings form the corpus known as Dharmaśāstra literature (Jois M. R., 1984, 22). The Dharmaśāstras began outlining social duties (Dharma) and the consequences of violating them. The Sanskrit term *Dharma* has no exact equivalent meaning in any other language. Defining it comprehensively is challenging; instead, it is best understood through its various interpretations. Dharmasūtras attributed to Gautama, Baudhāyana, Āpastamba, Hārīta, Vasiṣṭha, and Viṣṇu were held particularly in high esteem. The Dharmasūtra of Gautama was considered as earliest one as compared to Baudhāyana and Āpastamba (Aiyangar, 1948, xxx). Likewise, Yājñavalkya enumerates no less than twenty figures, including himself as the authors of the revered smṛtis. Among these he identifies Manu, Atri, Viṣṇu, Hārīta, Uśana, Aṅgiras, Yama, Āpastamba, Saṃvarta, Kātyāyana, Bṛhaspati, Parasara, Gautama, Vasiṣṭha, Vyāsa, Saṅkhā, Likhitā, Dakṣa as the Principal promulgators of Dharmaśāstras (Jois, 1984, 22).

Subsequently, with the rise of imperial Mauryas, which coincided with the emergence of more defined state administration and threshold of state formation, it saw the need for regulations and sought a centralized approach to justice against the threats of external and internal instability. Thus, by this time it was in this changing socio-political milieu that Kauṭilya, in his Arthaśāstra introduced a proper state centric legal system. Unlike the earlier Sūtra and Smṛti texts, which prioritized moral and religious ideals, there was a paradigm shift, wherein Kauṭilya now viewed crime and punishment as a strategic necessity for governance. Thus, with this it marked a significant development in legal thought, which was more politically stirred.

1.2. Understanding Kauṭilya's concept of Crime and punishment

By the time period of Kauṭilya, as observed by R.D Gupta, the laws have become more comprehensive, more reasonable and more humane (Gupta R. , 1930, 1). He further pointed out that due to the influence of time and civilization, it also had an impact on the severity of the criminal law and punishments. Moreover, by his time, much development in the procedure, as well as establishment of regular grades of courts has been observed. Gupta states “The municipal law formulated by him are excellent, and breathe a modern spirit. The laws relating to state policy are no less interesting. Public health and sanitation have received anxious care from him. Laws relating to public justice display a high ideal of Justice and morality” (Gupta, 1930, 1). Kauṭilya, thus prescribes a rule for overall guidance of a man and showcase a level of advancement. In relation to Kauṭilya's approach towards an impression of crime, K.M Agrawal had attempted to made an observation that Kauṭilya also seems to acknowledge an evolutionary nature of a crime. He inferred this from the prescriptive rules laid down by Kauṭilya and made an assertion; ‘Kauṭilya also accepts the principles of dynamic growth, flexibility and modifiability in accordance with the changing condition and time’ (Agrawal K. M., Kautilya on Crime & Punishment, 1983, 1-2). He mentions that, to Kauṭilya; *intention* and *gross negligence* constitute the two main components of a crime. Supporting this, he further states “when intention is involved, the crime is grave and so the punishment must be heavy. When the intention is absent and the act has been done simply through gross negligence, the gravity of the crime is reduced; but when both these elements—intention and gross negligence—are absent, the wrongful act is no crime at all and hence no punishment is to be given for it.” (Agarwal, 1983,

1-2) Therefore, according to Agrawal, to Kauṭilya, the guilty intention forms the essence of crime and played a significant role in determining the gravity of a crime.

Our understanding of Kauṭilya's perception on punishment is mostly shaped by Book I, Chapter IV of the Arthaśāstra, wherein he asserts; that sceptre on which the well-being and progress of the sciences of Ānvīkṣa, the triple Vedas, and Varta depend is known as Daṇḍa (punishment). That which treats of Daṇḍa is the law of punishment or science of government (Daṇḍaniti) (Arthaśāstra, 1.4.3). He believed that sciences—Ānvīkṣa,¹ Vedas, and Varta, (Arthaśāstra, 1.4.1-2)² all depends on Daṇḍa for their proper function. Kauṭilya fervently believed that without an application of Daṇḍa, societal structure would collapse into disorder, akin to the law of the fish (Mātsyanyāya), where the strong would dominate the weak-

अप्रणीतो हि मात्स्यन्यायमुद्भावयति । वलीया-नवलं हि ग्रसते दण्डधराभावे । तेन गुप्तः प्रभवतीति॥ (Arthaśāstra, 1.4.13).

He further states 'when used carefully and justly, punishments bring spiritual growth, material well-being and sensory pleasures to the people. However, if used unjustly out of anger, contempt or passion, it enrages even forest anchorites and wandering ascetics, not to speak of householders' (Arthaśāstra, 1.4.11-12). Being an ardent believer of Caturvarṇāśrama, he contends that the people belonging to the four Varṇas and the four stages of life would adhere to their respective duties and occupations, when they were governed by a king wielding a Daṇḍa, and it's just application by him. It is only through the fear of Daṇḍa that they adhere to their respective paths. The text asserts

चतुर्वर्णाश्रमो लोको राज्ञा दण्डेन पालितः । स्वधर्मकर्माभिरतो वर्तते स्वेषु वर्त्मसु ॥ (Arthaśāstra, 1.4.16)

Almost in all the works relating to an ancient Indian polity, we may observe the prominence given to the prerequisite of a ruler, thus Kauṭilya too was not an exception in this. Kauṭilya believed that a ruler, exerting Daṇḍa is crucial to prevent chaos and ensures that justice is upheld. While Arthaśāstra talks about the just and unjust application of Daṇḍa in relation to the subjects and the state and the necessity of the King, wielding Daṇḍa to protect his subjects. However, at the same time, the King was also not an exception and were equally accountable for his doings. As Kauṭilya lays down

राज्ञः स्वधर्मस्वर्गाय प्रजा धर्मेण रक्षितुः । अरक्षितुर्वा क्षेमुर्वा मिथ्यादण्डमतोऽन्यथा ॥ (Arthaśāstra, 3.1.41)

1.3. Nature and Modes of Punishment:

With regard to the aims and rationale behind the administration of punishment in ancient India is concerned, scholars have examined that it was mainly deterrent. For instance, J.N.C. Ganguly states 'Punishment in such instances becomes the means, direct or indirect, of preservation from further ruin' (Ganguly, 1926). Ancient legal texts provided clear guidelines for an administration of punishment, in order to ensure that both the nature of crime and the circumstances of an offender were considered. Instead

¹ Anvikshaki comprises the Philosophy of Sankhya, Yoga, and Lokayata.

² Agriculture, cattle-breeding and trade constitute Varta. It is most useful in that it brings in grains, cattle, gold, forest produce (kupyā), and free labour (vishti). It is by means of the treasury and the army obtained solely through Varta that the king can hold under his control both his and his enemy's party. Ibid 1.4.1.2

of a fixed approach based solely on the offense, punishments were adapted to an individual's character, environment and situation. We find that, this conception was taken into consideration by various other preceding law giver too. This can be observed in R.D Gupta's narration, where he mentions about Gautama, who advises the judge to take into consideration various factors, such as – status of the offender, his bodily strength, the nature of the offense and whether it has been repeated. He further quotes Manu 'Let the King having fully ascertained the motives, the time and place of the offense, and having considered the ability of the criminal to suffer and the nature of the crime, cause punishment to fall on those who deserve it' (Gupta, 1930, 27-28). Further, according to Yājñavalkya, punishment should be inflicted after taking into consideration the nature of the offense, country or locality, time, physical strength, deed and wealth. Additionally, Viṣṇu also suggests that the punishment should be proportionate to the gravity of the offense and should be dependent on the caste, position and age of the offender (Gupta, 1930, 27-28). Besides, S. Bose and P. Verma also analyzed a similar note, wherein they mention that Vasistha also taken into consideration of the following factors viz., place and time of the offense, habits and practices of the offender, age and learning of the offender, situational complexities, the nature & gravity of the offense, including physical, social & mental (Bose, 1982). P. V Kane remarks "This provision means that the Dharmaśāstras did not hold that the same punishment must be meted out for the same offence irrespective of the antecedents, characteristics or physical and mental condition of the offender. They always took extenuating circumstances into account" (Kane P. , 1946, 392). Thus, it seems that Kauṭilya was also not an exception in this and followed a condition along the similar lines. This was evident from the regulations laid down by him, for instance; he states 'After taking into full consideration the person and the offence, the motive, seriousness or lightness of the offence, the consequences, the present effects, and the place and time, the magistrate shall fix the highest, the lowest and the middle in the matter of punishment, remaining neutral between the king and the subjects' (Arthaśāstra, 4.10.17-18).³ Subsequently, modes of punishment involve different forms of methods by which penalties are imposed for offences, which depends on the nature of crime and followed by other various factors as discussed above. Kauṭilya stands out for his meticulous enumeration and detailed prescription of punishments. He classifies punishments into broad categories i.e., verbal, pecuniary and corporal. Verbal punishment ranged from mild admonition to stern reprimand, while pecuniary penalties varied from a fine as small as one-sixteenth of a Paṇa (value of economic exchange) to the complete confiscation of the offender's property. Corporal punishment, on the other hand extended from mere whipping to capital punishment, either in its simplest form or accompanied by torture. Besides, other various types of punishment were also used at that time, which may include branding and banishment and so on. Kauṭilya prescribes verbal punishments or Vāga -Daṇḍa to be imposed in those cases, where an offense was committed in ignorance or through negligence. P.V Kane expresses his view 'That admonition and reproof were two modes of punishment shows that ancient writers were alive to the notion that among very sensitive persons or in a very sensitive society verbal condemnation would be enough to achieve the main purposes of punishment' (Kane, 1946, 391). Pecuniary penalties or fines formed another frequently imposed form of punishments. Fines were administered either as fixed; predetermined amounts or as variable penalties adjusted according to the specifics of the offense. Fixed fines were of three kinds viz., Pūrvasāhasa (the first or the lowest amercement), Madhyamasāhasa (the middle most amercement) and Uttamasāhasa (the highest

³ पुरुषं चापराधं च कारणं गुरुलाघवम् । अनुबन्धं नदात्वं च देशकालौ समीक्ष्य च ॥ उत्तमावरमध्यत्वं प्रदेष्टा दण्डकर्मणि । राज्ञश्च प्रकृतीनां च कल्पयेदन्तरान्वितः ॥ Arthaśāstra 4.10.17-18

amercement). Kauṭilya classified amercements into three levels: the lowest fine ranged from a minimum of 48 Paṇas to a maximum of 96 Paṇas. The middle most fine ranged from a minimum of 200 Paṇas to a maximum of 500 Paṇas. Whereas, the highest fine ranged from a minimum of 500 Paṇas to a maximum of 1000 Paṇas.⁴ As observed by P.V Kane, these are variously defined by different lawgivers (Kane, 1946, 393-394).⁵ Likewise, confiscation of the property constitutes another category within pecuniary punishment. Next to pecuniary, corporal punishments form another mode of punishment in the Arthaśāstra. The extreme mode of corporal punishment was applied in the form of death penalty, wherein it was imposed in various categories, considering the severity of the offences. As Agrawal indicates, and also as it is clearly revealed in the Arthaśāstra, it ranges from simple death to death penalty; accompanied by torture including; burning alive, cooking in a big jar, drowning in water, impaling on stake, slaying with arrows, tearing by bullock carts, cobra bite and through poison (Agrawal, 1983, 30-31). Although, at the same time, an insignificant level of flexibility can be observed in relation to imposition of capital punishment, as to transgressor; amercement option was also specified along with death penalty, which were mainly higher in amount, thus making the death penalty avoidable in some cases. While illustrating about the other forms of punishment, Kauṭilya also discusses branding and banishment particularly in the context of the Brāhmaṇas. He advocates that Brāhmaṇas were to be exempted from being tormented, regardless of the gravity or nature of crime. Probably considering the position enjoyed in the social hierarchy, Kauṭilya proposes an alternative punishment i.e., branding and exile for them. For instance, he suggests a symbol or a mark on the forehead of the culprits, like a dog in case of theft. Thus, Brāhmaṇas were to be publicly denounced for their immoral and wrongful acts and thereafter, suggested to exiled him or settle in mines⁶ (Arthaśāstra, 4.8.27-29).

1.4. Classification of offenses and their corresponding punishment

Akin to the modern times, the Arthaśāstra was no less comprehensive in its enumeration of assorted crimes and their corresponding punishments. Book III and Book IV of the Arthaśāstra, consisting twenty and thirteen chapters respectively are particularly germane to this content. The third book, titled '*Concerning Judges or Dharmasthīyam*' discusses the offenses of both civil and criminal nature viz., marriage, inheritance of property, gifts, sale without ownership, non-payment of debts, deposits and rescission of sale and purchase. Simultaneously, it further deals with the disputes which are criminal in nature viz., theft, robbery, defamation, physical injury, disputes between slaves and masters, gambling & betting etc.

⁴ स्त्रियं पुरुषं वाऽभिषह्य बन्धनतो बन्धयतो वन्धं वा मोक्षयतः पञ्चशतावरः सहस्रपर उत्तमः साहस दण्डः। Arthaśāstra 3.17.8-10

⁵ According to Śankha-Likhita the first amercement is fine from 24 paṇas to 91, the middling one is from 200 to 500 paṇas and the highest is from six hundred to 1000 in proportion to the value of the matter in dispute or the injury caused.

Manusmṛiti VIII. 138 (Visnu Dh. S. IV. 10) states that the first, middling and highest fines are respectively 250, 500 and 1000 paṇas. While Yaj. 1. 366 puts these respectively at 270, 540 and 1080.

Nār. (sāhasa, verses 7-8) prescribes that 100 paṇas is the lowest limit of fines for the lowest kind of sāhasa, 500 is the lowest for middling sāhasa, 1000 is the lowest fine in what is called the highest amercement.

Kat. (490-493) lays down the following rules: Whatever figure of fine is prescribed in the smṛiti texts for a wrong it is to, be paid to the king in paṇas of copper or their equivalent. Where the fine is said to be one-fourth or one half of a māṣa, there it is a golden māṣa that is meant; when the fine is declared in māṣas, they are to be understood as those of silver and where the fine is declared in kṛṣṇālas the same is to be understood; a māṣa is 1/20th of a kārṣāpaṇa.

⁶ सर्वापराधेष्वपीडनीयो ब्राह्मणः । तस्याभिशास्ताङ्को ललाटे स्याद्व्यवहारपतनाय ॥ स्तेये श्वा । मनुष्यवधे कबन्धः । गुरुतल्पे भगम् । सुरापाने मद्यध्वजः ॥ ब्राह्मणं

पापकर्माणमुद्धृष्याङ्ककृतव्रणम् । कुर्यान्निविषयं राजा वासयेदाक्रेषु वा ॥ Arthaśāstra 4.8.27-29

In the same manner, the fourth book, titled '*Suppression of criminals or kaṇṭakaśodhanam*' are especially devoted to the offenses of criminal nature. Apart from these two books, the second book, titled 'Heads of the Departments or Adhyakṣapracārah' and the fifth book, titled 'Secret conduct or Yogavṛttam' also deserves an attention while dealing with the same.

1.5. Offences against king and the state:

Since ancient times, it is commonly known that the King was placed at apex of the state structure, around whom the entire political machinery revolved. King has been held in high regard in many traditions, where he is often viewed as a supreme representative of a God. When it comes to Kauṭilya, he too was a firm believer of Kingship. In fact, he has devoted several chapters of Book I of Arthaśāstra concerning assorted aspects of kingship. Mukherjee while elucidating Kauṭilya's approach to kingship remarks 'Kauṭilya's ideal of kingship was purely secular in the sense that he attributed only those qualities to the king and expected only those duties from the king which would serve the practical interests of the subjects from all aspects. To fulfil this mission, he did not care if anywhere he had to disregard religious precepts, morality, and established ethical canons, follow the so-called unfair means of force, fraud, intrigue, astuteness etc' (Mukherjee, 1976, 80). In context to the nature of offense against king and state, R.D Gupta appropriately comments 'in all ages and in all countries, offences against the King and the State have been considered most heinous. For the preservation of the state and society it is incumbent upon the rulers and the legislators to see that no violent attack is made upon the government, or the King who stand as a representative of the people. So, the slightest attempt in this direction must be stamped out with the strong hand.' (Gupta, 1930, 1) In the Arthaśāstra, the king was held in an epicentre of legal administration, wherein the king was equated with Indra and Yama and viewed as pillar of justice and the ultimate authority, Illustrating his role as a legal authority, and committing anything nefarious against him, Kauṭilya clearly mentions-

‘इन्द्रय मस्थानमेतत् राजानः प्रत्यक्षहेडप्रसादाः । तानवमन्यमानान् दैवोऽपि दण्ड स्पृशति । तस्माद्राजानो नावमन्तव्याः”
इति क्षुद्रकान्प्रतिषेधयेत् ।’⁷ (Arthaśāstra, 1.13.10-12)

Therefore, any hostility, disloyalty, or an act of conspiracy against the King or State was considered as a heinous crime. In this regard, Kangle asserts 'traitorous persons are like thorns to the king and his rulership' (Kangle R. , 1960). Kauṭilya enumerates number of offenses, and its equivalent punishments for acting against the king, simultaneously also suggests a remedy against those principal officers who secretly join forces with enemies. In this matter, he advises the king to inflict punishment or suppress it through the secret means. Arthaśāstra has extensively discussed how to suppress such treasonable officers silently and check their loyalty towards the king. Likewise, if principal officers or vassals rises in revolt and threatens the king's authority, in such set-up Kauṭilya advises the king to invite those rebels under the pretence of being offered kingship and then have him killed. They were subjected to infliction of severe punishments or king can employ special measures to get rid of them, which was referred to as 'Remedial against

⁷ It is the king in whom the duties of both Indra (the rewarder) and Yama (the punisher) are blended, and he is a visible dispenser of punishments and rewards (heḍaprasādā); whoever disregards kings will be visited with divine punishments, too. Hence kings shall never be despised. Arthaśāstra 1.13.10-12

Troubles⁸ (Arthaśāstra, 5.6.16-17). One who tries to covet the kingdom or who attacks the king's palace and who indulged in instigating forest tribes or external enemies to rebel, as well as who instigate or cause a rebellion in the fortified city, the country or the army were deemed as an offense and saw them as a threat to state. Hence to tackle such adversaries, he prescribes the infliction of brutal punishment, in which the offenders to be slain by setting fire in hands and head. In case, if the offender is a Brāhmaṇa, in lieu of this, a varied punishment making the accused Brāhmaṇa to enter the darkness⁹ (Arthaśāstra, 4.11.11-12). The act of treason was treated as severe offense, whoever orders what is treasonable it would lead to the punishment of blindness by means of poisonous collyrium or a fine of eight hundred Panas¹⁰ (Arthaśāstra, 4.10.13). Another form of offense against the king include; whoever speaks ghastly of the king, reveals a confidential matter related to his secret counsel or spreads a horrendous & evil rumours were treated severely. For such offense, Kauṭilya prescribed the offender's tongue should be rooted out as a punishment¹¹ (Arthaśāstra, 4.11.21). Moreover, creation of counterfeit documents and seals of the King was also viewed as severe crime, and in such cases the punishment would be death penalty (Arthaśāstra, 4.19.12). Undoubtedly, stealing was considered as a crime by ancient lawgivers including Kauṭilya, but the stealing of King's possessions was even more weighty¹² (Arthaśāstra, 4.8.2). An individual, who tries to help the prisoner to escape, causing an act of treachery against the State and violation of their rule, would be consequence to pecuniary punishment, confiscation of property and death penalty respectively (Arthaśāstra, 4.9.27).¹³ Since the minting and the issuance of coins was dealt by the State or King, as such any action which violates the rule pertaining to this was seen as an offense. Thus, it was suggested to exile those counterfeiters for transgression (Arthaśāstra, 4.4.20). Even writing a royal edict with omissions and additions was viewed as an offence, for which brutal punishment was awarded, where offender's left hands and both feet would be cut off or had to pay fine of 900 Panas¹⁴ (Arthaśāstra, 4.10.14). Moreover, having a relationship with the king's wife or queen was also considered as a heinous offense during the Muṛyān period. The offenders were to imposed the punishment of being boiled in a big jar¹⁵ (Arthaśāstra, 4.13.33). Likewise, Arthaśāstra mentions numerous assorted offenses pertaining to the King and the State, which is impractical to discuss them in details (Arthasastra, 4.9.6-7, 4.9.17-18, 2.36.36-37, 4.9.2).

1.6. Offences related to Slaves and labourers:

The existence of Slavery was not alien to India during the ancient days. It was a universal phenomenon rampant in almost all of the giant empires that flourished across in all traditions. Arthaśāstra provides a detailed narration of the slaves and labourers, along with it also attaches a punishment to those who involves in transgression of certain rules relating to the content. Kauṭilya seems to have been clear while

⁸ यदि वा कश्चिन्मुख्य सामन्तादीनामन्यतम कोपं भजेत्, तं "एहि राजानं त्वा करिष्यामि" इत्यावाहयित्वा घातयेत् । आपत्प्रतीकारेण वा साधयेत् । Arthaśāstra 5.6.16-17

⁹ For detail see Arthaśāstra 4.11.11-12. However, according to Kangle, *tamah pravesayet* seems to mean 'should make blind' rather than 'confine in a dark cellar for good. P.284

¹⁰ राजद्विष्टमा दिशतो द्विनेत्रभेदिनश्च योगाञ्जनेनान्धत्वमष्टशतो वा दण्डः ॥ Arthaśāstra 4.10.13

¹¹ राजाक्रोशकमन्त्र भेदक योरानष्टप्रवृत्तिकस्य जिह्वामुत्पाटयेत् ॥ Arthaśāstra 4.11.21

¹² For more details see Arthaśāstra.4.9.4, Ibid.4.8.2

¹³ चारकमभित्वा, निष्पातयतो मध्यमः; भित्वा वधः, व-न्धनागारात्सर्वस्वं वधश्च ॥ Arthaśāstra 4.9.27

¹⁴ राजशासनमनुमतिरिक्तं वा लिखतः वामहस्तद्विपादवधो नवशतो वा दण्डः ॥ Arthaśāstra 4.10.14

¹⁵ सर्वत्र राजभार्यागमने कुम्भीपातः ॥ Arthaśāstra 4.13.33

laying down regulations affecting to slavery. He asserts if the kinsmen sell or mortgages a minor Ārya¹⁶ individual for livelihood purposes except a slave, in that case, kinsmen of that particular Ārya, while taking into an account of the offender, punishment was to be imposed. In case of Śūdra 12 Paṇas, double that in the case of a vaiśya, three times in the case of a Kṣatriya, four times in the case of a Brāhmaṇa. Whereas, if a stranger or other than kinsmen committed a same offence, the lowest, the middle and the highest fines and death penalty was to be inflicted respectively. The same penalty would also apply to the purchasers and witnesses¹⁷ (Arthaśāstra, 3.13.1-2). However, in the same case, Mlecchās appear to be an exception, as Kauṭilya contends, it cannot be deemed as an offence if Mlecchās sell their child or keep it as a pledge. Whereas, he fervently states that an Ārya individual should not be subjected to slavery in any circumstances-

म्लेच्छानामदोष प्रजां विक्रेतुमाधातुं वा ॥ न त्वेवार्यस्य दासभावः॥¹⁸ (Arthaśāstra, 3.13.3-4)

Stealing of a one male or female slave also viewed as a grave offence, for which Kauṭilya suggest a harsh punishment, the offender's both feet were to be cut off or 600 Paṇas to be fined-

दासं दासीं वाऽपहरतः द्विपादवधः षष्ठतो वा दण्डः ॥ (Arthaśāstra, 4.10.11)

Likewise, for kidnapping a female slave together with money, Kauṭilya suggest a severe punishment, where the offender's left hand and both feet to be cut off or pay an amercement of 900 Paṇas-

कन्यां दासीं वा सहिरण्यमपहरतः नवशतो वा दण्डः। (Arthaśāstra, 4.10.14)

Regulations apply to Labourers can also be seen in the Arthaśāstra. To protect labourers' hard work and to maintain fairness, Kauṭilya accentuates the responsibility of a proprietors to pay wage on time, in case fail to comply, one-tenth or six Paṇas was to be fined for default or non-payment of wage, whereas twelve Paṇas or one-fifth in case of denial¹⁹ (Arthaśāstra, 3.13.33). However, he does not seem to be one sided but ensures mutual obligations, as indicated by the fact that, he had equally prescribed a fine to labourers who does not execute their work, notwithstanding receiving a wage, as such a fine of 12 Paṇas and detention was to be imposed²⁰ (Arthaśāstra, 3.14.1). Further, while considering the work security, Kauṭilya enumerates; labour was not be remove or bring in anyone by union, without informing them or else amercement of 24 Paṇas to be imposed for transgression²¹ (Arthaśāstra, 3.14.15-16).

1.7. Offences against animals and vegetation:

Arthaśāstra gives us evidence of societal behaviour towards their environment and animals in ancient India. It is worthwhile to mention, how he considers even animals and environmental aspects within the

¹⁶ Arya is a generic term used to indicate all the four Varnas viz., Brahman, Kshatriya, Vaisya, Sudra. For further details see Arthasashtra Book III

¹⁷ उददा सवर्जमा र्यभाणमप्राप्तव्यवहारं शुद्रं विक्रयाधानं नय-तस्वजनस्य द्वादशपणो दण्डः । वैश्यं त्रिगुणः । क्षत्रियं त्रिगुणः । ब्राह्मणं चतुर्गुणः । परजनस्य पूर्वमध्यमोत्तमवधा दण्डाः क्रेतृश्रोतृणां च ॥ Arthaśāstra 3.13.1-2

¹⁸ Ibid.3.13.3-4, For further details on Arya slave see Arthaśāstra 3.13.20

¹⁹ वेतनादाने दशवन्धो दण्डः । षटपणो वा । अपव्ययमाने द्वादशपणो दण्डः पञ्चवन्धो वा ॥ Arthaśāstra 3.13.33

²⁰ गृहीत्वा वेतनं कर्म अकुर्वतो भूतकस्य द्वादशपणो दण्डः । संरोधश्चाकरणात् ॥ Arthaśāstra 3.14.1

²¹ न चानिवेद्य भर्तुस्सङ्घः किञ्चित्परिहरेत्, अपनयेद्वा । तस्यातिक्रमे चतुर्विंशतिपणो दण्डः । सडेन परिहृत्यार्थदण्डः ॥ Arthaśāstra 3.14.15-16

bigger ambit of legal system, not only confining to human beings, thus mirrors an environmental awareness and significance given to the life of other living entities to then society. Arthaśāstra gives an importance to the life of living entities and acknowledges its ethical treatment. Kauṭilya considers inhumane treatment against them as an offence and tallies a punishment for transgression. Killing of animals was considered as a grave crime, for which the offender would be executed as a punishment. Even instigating another person to kill or steal is viewed as an offence, wherein Kauṭilya suggests the same punishment²² (Arthaśāstra, 2.29.16). If an individual attempts to cause disturbance or injury to animals, for instance, ‘for one causing a bull of the herd to be hurled down by another bull, the lowest fine for violence shall be the punishment, for causing death, the highest fine’²³ (Arthaśāstra, 2.29.38). He further suggests, the animals kept in the reserved parks and whose safety has been proclaimed are not to be threatened. If the offender is cruel against them by binding, killing or injuring, animals like deer, beasts, birds or fish in spite of the clear indication, as a result highest amercement was to be imposed for transgression²⁴ (Arthaśāstra, 2.26.11). According to Kangle ‘the Sūnādhyakṣa (Sk. सूनाध्यक्षः) is primarily concerned with the safety of game; he is to prevent the slaughter and ill-treatment of animals.’ (Kangle, 1960, 157) He also strictly controls the sale of meat and also advises, mentioning the types of animals, including aquatic beings, to whom not to cause any harm. On the grounds of violating their protection, the first amercement was to be imposed for transgression²⁵ (Arthaśāstra, 2.26.5). The Arthaśāstra strictly prohibits killing of the calf, the bull and the milch-cow, thus for killing and torturing them to death, the offender would meet with an amercement of fifty Paṇas²⁶ (Arthaśāstra, 2.26.10). Besides, stealing of an animal was also a weighty crime, for which he prescribes punishments accordingly.²⁷ Depending on the kinds of animals and on the basis of physical injury caused to them, against this pecuniary form of punishment has been prescribed.²⁸

Accordingly, since Harappan civilization to Vedic period, we will find the evidence of the reverence given to vegetation, a sense of acknowledgement towards nature as a source for their livelihood. In the same manner, Arthaśāstra also gives an importance to the same and lays down a punishment for causing harm against environment. If an individual cuts the shoots of trees, bearing a flower or fruit or which yields a shade in the city parks, in such cases, the fine would be 6 Paṇas and 12 Paṇas for cutting small branches, whereas for stout branches it is fixed with twenty-four Paṇas, while lowest amercement for destroying the trunks and middle amercement is pronounced for uprooting the tree²⁹ (Arthaśāstra, 3.19.28). Likewise, for the floral plants including bushes and creepers bearing flowers or fruit or yielding

²² स्वयं हन्ता घातयिता हर्ता हारयिता च वध्यः । Arthaśāstra 2.29.16

²³ यूथवृषं वृषेणावपातयतः पूर्वः साहसदण्डः घातयत उत्तमः । Arthaśāstra 2.29.38

²⁴ प्रदिष्टाभयानामभयवनवासिनां च मृगपशुपक्षिमत्स्यानां वन्धवधाहिंसायामुत्तमं दण्डं कारयेत् । Arthaśāstra 2.26.1

²⁵ मामुद्रहस्त्यश्वपुरुषवृषगर्दभाकृनयो मत्स्याः सारसा नादे यास्तटाककुल्योद्भवा वा । क्रौञ्चोल्क्रोशकदात्यूहहंस चक्रवाक-जीवञ्जीवकभृङ्गराजचकोर पत्तकोकिलमयूरशुकमदनशारिका वि हारपक्षिणो मङ्गल्याश्चान्येपि प्राणिनः पक्षिमृगा हिंसाबाधे भ्यो रक्ष्याः । रक्षातिक्रमे पूर्वसाहसदण्डः । Arthaśāstra 2.26.5

²⁶ वत्सो वृषो धेनुश्चैषामवध्याः । बानः पञ्चाशन्को दण्डः । Arthaśāstra 2.26.10

²⁷ Number of cases can be found in Arthaśāstra related to stealing and theft. For more detail study see Arthaśāstra 4.11.15, Ibid.4.10.4-5, Ibid.4.10.2., Ibid.4.13.20

²⁸ पशवो रश्मिप्रतोदाभ्यां वारयितव्याः । तेषामन्यथा हिंसायां दण्डपारुष्यदण्डाः । प्रार्थयमाना दृष्टापराधा वा सर्वो-पायैर्नियन्तव्याः । Arthaśāstra 3.10.32

महापशूनामेतेष्ववस्था नेषु द्विगुणो दण्डः, समुत्थानव्ययश्च । Arthaśāstra 3.19.26-27

²⁹ महापशूनामेतेष्ववस्था नेषु द्विगुणो दण्डः, समुत्थानव्ययश्च । पुरोवनस्पतीनां पुष्पफलच्छायावतां प्ररोहच्छेदने षट्पणः । क्षुद्रजाखाच्छेदने द्वादशपणः । पीनशाखाच्छेदने चतुर्विंशति-पणः ।

म्कन्धवचे पूर्वसाहसदण्डः । समुच्छितौ मध्यमः । Arthaśāstra 3.19.28

shade, he suggests a half a fine for the same offence. This amercement would also be applied to the trees in holy places, penance-groves and cremation grounds³⁰ (Arthaśāstra, 3.19.29). Similarly, if such offences are occurred in the prime location like boundaries, in sanctuaries, in royal parks and if the tree is significant, in such cases the fine would be doubled.³¹

1.8. Religious offence:

Bharat is a homeland to a various religion and faiths since time immemorial. It is an undeniable fact that, it was due to the religious tolerant nature of this country and people, which allowed the various faiths to find its place in this very country. Religion is inseparable part of ancient Indian culture and the same religious spirit flows down till today. K.M Agrawal while dealing with religious offence, aptly states its nature 'Blasphemy was a punishable offence in ancient India. Everyone had the right to hold any religious belief he liked, but had absolutely no right to wound the religious susceptibilities of others by aggressive propaganda or by abusing their religion and gods' (Agrawal, 1983, 204). Stealing of temple's property was measured as a serious crime, in consequence severe punishment was to be accorded to the offender. For instance, if an individual steals a cattle, images, persons, fields, houses, money, gold, gems or crops which belonged to temples, the punishment of highest fine or simple death would be inflicted.³² Kautilya clearly lays down a brutal punishment for concealing temple's property, wherein the offender was obligated to pay a fine of 800 Paṇas or both eyes to be blinded by means of poisonous collyrium³³ (Arthaśāstra, 4.10.13). Riding of temple's animal was also included within the purview of religious offence, for which the offender is subjected to the payment of fine of 500 Paṇas and increased to highest for killing them (Arthaśāstra, 4.13.20). Since the religious places were considered sacred, it was advised by Kautilya not to defile these places and maintain its cleanliness. Thus, if an individual violates these regulations, it was viewed as an offence and suggest a punishment for transgression (Arthaśāstra, 4.36.28). Although, various sects had been acknowledged and patronized by various distinguished rulers across centuries, where they had shown much flexible attitude towards then prevailing sects, for instance Chandragupta himself was a follower of Jainism and his successor Bindusāra patronized Ājīvākās, while it was widely known that Aśoka was a staunch follower of Buddhism. However, it appears that, Kautilya was not in the same page and slightly rigid in his approach, as he mentions, if an individual feeds Śākya, Ājīvākā and other heretical monks at rites in honour of gods and manes, the fine would be one hundred Paṇas³⁴ (Arthaśāstra, 3.20.16).

1.9. Sexual offence:

³⁰ पुष्पफलच्छायावहुलमलनाम्वर्धदण्डः । पुण्यस्थानतपोवन-श्मशानद्रुमेषु च Arthaśāstra 3.19.29

³¹ सीमवृक्षेषु चैत्येषु द्रुमेष्वालक्षितेषु चः त एव द्विगुणा दण्डाः कार्या राजवनेषु च॥ Arthaśāstra .3.19.30

For more further details refer Chapter-3.19.

³² Artha.4.10.16

Manu prescribes 500 Panas for the destruction of an idol, while the Vishnu prescribes a highest punishment for it. Katyana states, 'he who cuts, steals or burns the images of the gods or destroys temple, shall be fined 250 Panas. Sankha prescribes a fine of 800 Panas, as well as the repair of idol for breaking it. For further details see R.D Gupta's Crime and Punishment in ancient India.p.39-40

³³ देवद्रव्यमवस्तुगतो द्विनेत्रभेदिनश्च योगाञ्जनेनान्धत्वमष्टशतो वा दण्डः ॥ Arthaśāstra 4.10.13

³⁴ प्रत्यासन्नमापद्यनभिधावतो, निष्कारणमभिधावन कुर्वतश्शाक्याजीवकादीन् वृषलप्रत्र जितान् देवपितृकार्येषु भोजयतश्शक्त्यो दण्डः । Arthaśāstra 3.20.16

Even today, it is not an uncommon issue in the society, wherein people are commonly facing sexual offense, particularly women, where numerous heinous cases are being recorded every day, hitting into the news headlines. It is one of the sinful crimes amongst the plethora of offences. Across every generation, it is deemed to be punishable by various law givers. Arthaśāstra comprehensively discusses about it in book IV chapter XII. The laws included in these books seemed to have been stringent and rigid. For example, if a pre-puberty maiden of an equal Varṇa is molested by an individual, the law suggests the punishment of amputation of his hands or he is bound to pay 400 Paṇas for transgression, and death penalty to be accorded, in case if it results in death of a maiden (Arthaśāstra, 4.12.1). Similarly, the middle and index fingers would be cut off or a fine of two hundred Paṇas is inflicted for the same, in case the crime is committed against a woman attending juvenescence, an adequate compensation was to be paid by the offender to her father³⁵ (Arthaśāstra, 4.14.3-4). Kauṭilya clearly asserts that no male can approach for sexual intercourse with any female without her consent and will- न च प्राकाम्यमकामायां लभेत । (Arthaśāstra, 4.12.13). The Arthaśāstra also maintain some regulations affecting women's chastity. If a bride is not chaste at the time of consummation, then she was subjected to fine of 4 Paṇas and obligated to forfeit her dowry and marriage expenses (Arthaśāstra, 4.12.15). Moreover, if a maiden, who of her own accord, yields herself to a man, she was to be made King's slave³⁶ (Arthaśāstra, 4.12.22). Further, Kauṭilya mentions that, if an individual cohabits with the harlot's daughter, a fine of 54 Paṇas to be imposed, besides he was to pay dowry to her mother, which was sixteen times her daily income³⁷ (Arthaśāstra, 4.12.26). Kauṭilya insists on a dignified treatment even to female slaves, as reflected in the following cases, wherein for involving in a physical blending with the daughter of slave, who is not a slave herself, as such amercement of 24 Paṇas, along with the payment of nuptial fee and ornaments would be penalized as a punishment for transgression³⁸ (Arthaśāstra, 4.12.27). Likewise, if an individual defiles a slave, on the account of ransom due from her, against this fine of 12 Paṇas would be penalized and he was obligated to provide woman with clothes and ornaments³⁹ (Arthaśāstra, 4.12.28). Kauṭilya viewed adultery (saṅgrahaṇam)⁴⁰ as a serious offence. Against this, he prescribes a brutal punishment for such indulgence and states; if a woman was caught in adultery, she would be subjected to severe punishment, wherein nose and ears were to cut off or a fine of five hundred Paṇas, whereas doubled in the case of man⁴¹ (Arthaśāstra, 4.10.12). Apart from this, a sexual relationship between an individual belonging to the same gender or in modern term 'homosexual' was something, which was considered in Arthaśāstra as awful and condemnable offence. Kauṭilya asserts, if a man indulges in any corporeal course with another man, both the offenders were to be imposed with first amercement-पूर्वस्साहसदण्ड पुरुषमधिमेहतश्च ॥ (Arthaśāstra, 4.13.40) In another instance, if a maiden is willingly deflowered by another woman and of the same Varṇa, as such the offender would be subjected to an amercement of 12 Paṇas and double the fine or 24 Paṇas to woman who violates it.

³⁵ प्राप्तफलां प्रकुर्वतो मध्यमप्रदेशिनीबधो द्विशतो वा दण्डः, पितृश्रापहीन दद्यात् ॥ Arthaśāstra 4.14.3-4

³⁶ स्त्री प्रकृता सकामा समाना द्वादशपणं दद्यात्, प्रकृती द्विगुणं । अकामायाश्चास्त्यो दण्डः आत्मरगार्थं शुल्कदानं च । स्वयं प्रकृता राजदास्यं गच्छेत् ॥ Arthaśāstra 4.12.22

³⁷ गणिकादुहितरं प्रकुर्वतश्चतुष्पञ्चाशत्पणो दण्डः; शुल्कमातुर्भाग्षोडशगुण ॥ Arthaśāstra 4.12.26

³⁸ दासस्य दास्या वा दुहितरमदाससीं प्रकुर्वतश्चतुर्विंशतिपणो दण्डः शुल्कावध्यदानं च । Arthaśāstra 4.12.27

³⁹ निष्क्रया नुरुपां दासी प्र कुर्वतो द्वादशपणो दण्डः वस्त्रावध्यदानं च ॥ Arthaśāstra 4.12.28

⁴⁰ केशाकेशिकं सङ्ग्रहणं उपलिङ्गनाद्वा शरीरोपभोगानां तज्जातेभ्यः स्त्रीवचनाहा ॥ Arthaśāstra 4.12.35

According to Kauṭilya, adultery is to be understood as when there is mutual caressing of the hair, or from indications of bodily enjoyment, or from the opinion of experts, or from the woman's statement.

⁴¹ स्तेनपरिदारिकयोस्साचिव्यकर्मणि स्त्रियास्सगृहीतायाश्च कर्णनासाच्छेदनं पञ्चशतो वा दण्डः; पुंसो द्विगुणः ॥ Arthaśāstra 4.10.12

However, if the maiden was unwilling, then the woman who forced herself upon the maiden was subjected to fine of 100 Paṇas and dowry.⁴²

1.10. Offences related to Marriage:

In the nation like India, marriage was and is a well-thought-out as a revered unification of two individuals, as manifested in the concept like Śiva-śakti. It was treated as pious, with two individuals coming together to perform their Dharma and responsible for the continuation of their lineage. Akin to the Dharmaśāstras, Kauṭilya also acknowledges eight forms of marriage in his Arthaśāstra. Viz., Brāhma, Prājāpatya, Arṣa, Daiva, Gāndharva, Asura, Rakṣasa, Paisāca. Kauṭilya has laid down various rules and regulations for householders, as well as their corresponding punishment for violation. According to Arthaśāstra, women attain their majority at the age of 12yrs and men at 16 yrs. However, if an individual fail to carry out their marital duties, in spite of attaining their majority, as such a fine of 12 Paṇas to be imposed on women and twice the amount for men⁴³ (Arthaśāstra, 3.3.1). Kauṭilya advised to impart modest behaviour to women of deflative nature. However, he insists that this was to be done without using the expressions like ‘thou lost one’, ‘thou ruined one’, ‘thou cripple’, ‘thou fatherless one’ or ‘thou motherless one’, or an alternative like striking on her back three times either with bamboo bark or rope or with the palm of the hand can be used. Thus, in case of transgression, the offender is liable to half the punishment for verbal injury and physical assault⁴⁴ (Arthaśāstra, 3.3.7-9). Further, he suggests the application of same punishment for a woman or wife whose offence against her husband is well known; for enjoying outside her home, purely out of jealousy or hatred towards her husband⁴⁵ (Arthaśāstra, 3.3.10-11). Besides, rules were also laid down for marital obligations, wherein, if a wife distaste her husband, not prettifying herself for the fulfilment of marital duty and has passed the period of seven turns of her menses, should straightaway set down her endowment and ornaments, along with it a consent to be given to her husband to take another woman. In the same manner, if a husband dislikes her wife, then he must allow her to take shelter in the house of a mendicant women, a guardian or her kinsmen. In case, for imposing false accusation to spouse, notwithstanding of the clear indications or refusal of cohabitation or when an approach is made to another person of same Varṇa for an affair through a secret emissary, would be subjected to fine of 12 Paṇas⁴⁶ (Arthaśāstra, 3.3.12-14). Additionally, Arthaśāstra also places rules affecting the mobility of a wife and prescribes a pecuniary punishment for its violation. Despite being prohibited, if a wife indulge herself in the amorous sport or drink, she will be fined 3 Paṇas. In case, if she goes out in a day to see women’s show or in a pleasure trip with a woman, she is subjected to the fine of 6 Paṇas and if it is with men, it would be 12 Paṇas, whereas doubled the fine for committing same offence if it’s at night time⁴⁷ (Arthaśāstra, 3.3.20-22). Similarly, in case if a wife steps out of a house, when her husband is asleep and

⁴² स्त्री प्रकृता सकामा समाना द्वादशपणं दद्यात्, प्रक त्री द्विगुणं । अकामयाशस्यो दण्डः आत्मरगार्थं शुल्कदानं च । Arthaśāstra 4.12.20-21 For further understanding and more cases refer- Chapter 4.13 of Arthaśāstra.

⁴³ द्वादशवर्षा स्त्री प्राप्तव्यवहारा भवति । षोडशवर्षः पुमान् । अत ऊर्ध्वमशुश्रूषायां द्वादशपणः स्त्रीया दण्डः पुंसो द्विगुणः॥ Arthaśāstra 3.3.1

⁴⁴ "नमने विनये न्यङ्गोऽपि केऽमातृके" इत्यनिर्देशेन विनय-ग्राहणम् ॥ वेणुदलरज्जुहस्तानामन्यतमेन वा पृष्ठे त्रिराघातः । तस्या तिक्रमे वागदण्डपारुष्यदण्डाभ्यामर्थदण्डः ॥ Arthaśāstra 3.3.7-9

⁴⁵ तदेव स्त्रिया भर्तारि प्रसिद्धं मदोषाया ईर्ष्याया बाह्यविहा-रेषु द्वारेष्वस्यो यथानिर्दिष्टः ॥ Arthaśāstra 3.3.10-11

⁴⁶ भर्तारि द्विषन्ती स्त्री सप्तमार्तवाऽन्यं कामयमाना तदानीमेव स्थाप्याभरणं निधाय भर्तारि अन्यया सह शयानमनुशयीत ॥

मिक्षुक्त्वन्वाधि ज्ञातिकुलानामन्यतमे वा भर्ता द्विषत् स्त्रिय-मेकामनुशयीत ॥ दृष्टि लिङ्गे मैथुनापहारे मवर्णापमर्षोपगमे वा मिथ्यावादी द्वादशपणं दद्यात् ॥ Arthaśāstra 3.3.12-14

⁴⁷ पुरुषविप्रकाराद्वा स्त्री चेन्मोक्षमिच्छेत् नास्ये यथागृहीतं दद्यात् । अशो धर्मविवाहानामिति ॥ प्रतिषिद्धा स्त्री दर्पमद्यक्रीडायां त्रिपणं दण्डं दद्यात् ॥ दिवा स्त्रीपेक्षाविहारगमने षट्पणो दण्डः ॥ पुरुषपेक्षाविहारगमने द्वादशपणः । रात्रौ द्विगुणः ॥ Arthaśāstra 3.3.20-22

under intoxication, or for not opening the door to the husband, she will be fined with 12 Paṇas⁴⁸ (Arthaśāstra, 3.3.23). If a man and a woman with an intention of sexual intercourse hints a sign to each other or hold a secret conversation for the same, women was to be fined 24 Paṇas and doubled the fine in the case of men for transgression⁴⁹ (Arthaśāstra, 3.3.24). As far as second marriage is concerned, it was not completely denied, but permissible under certain conditions. It was stated that if a woman unable to conceive a child or does not bear a son or infertile, the husband is advised to wait for eight years before marrying another; while if she bears a dead offspring, he has to wait for ten years and again two years more or twelve years, in case if she brings forth only female child. Only after this, he may allow to marry a second partner with an intention of getting a male child. In case of violation of this rule, he has to hand over the dowry, the woman's property and an adequate monetary compensation, and pay a fine of twenty-four Paṇas maximum⁵⁰ (Arthaśāstra, 3.2.38-39).

1.11. Offences relating non-payment of tax:

For a smooth and efficient functioning of a state, tax constitutes a major source for revenue, even today. Thus, various regulations were framed to ensure the proper collection of duties and prescribes punishment in case of violation. śulkaādhyakṣa (Sk.शुल्काध्यक्ष) was in charge of the collection of these duties. Customs houses were located in the vicinity of the big gates of the city, where the traders would go and pay the tax. The receivers of the duty were supposing to keep records of the traders and to make sure the stamping was made on the commodities. However, if the goods do not bear a stamp, the penalty is double the dues. Whereas, if they managed to forge a stamp, in consequence the fine is eight times the duty⁵¹ (Arthaśāstra, 2.21.1-4). Further, Kauṭilya states 'for fear of duty a trader declares the quantity of the goods or the price to be less than it actually is, the king shall confiscate that excess.' Or the trader was obligated to pay eight times the duty⁵² (Arthaśāstra, 2.21.10-11). Kauṭilya mentions that if any goods that have passed beyond without paying its duty, the fine would be eight times the duty. Through the means of secret agents operating on roads and in places without roads were employed to find out such evasion. The Arthaśāstra mentions that goods intended for marriage, marriage-gifts accompanying the bride, goods intended as gifts, goods required on the occasion of a sacrifice or a ceremony or a birth and goods used in various rituals like worship of the gods, tonsure rite, initiation for Veda study, hair-cutting rite, consecration for a vow and so on, were exempted from paying any duty or it was duty-free. However, if an individual carrying a goods, claims it to be duty free items in order to evade paying duty, then it was considered as an offence and the punishment to be imposed on the ground of theft⁵³ (Arthaśāstra, 2.21.18-19).

1.12. Offences related to debts:

⁴⁸ सुप्तमत्ताप्रव्रजने भर्तृरादाने च द्वारस्य द्वादशपणः ॥ Arthaśāstra 3.3.23

⁴⁹ स्त्रीपुंसयोर्वैधुनार्थेनाङ्गविचेष्टायां रहशील सम्भाषायां वा चतुर्विंशतिपणः स्त्रिया दण्डः पुंसो द्विगुणः ॥ Arthaśāstra 3.3.24

⁵⁰ वर्षाण्यष्टात्रप्रायमानामपुत्रां वन्ध्यां चाकाङ्क्षत । दश निन्दुं द्वादश कन्याप्रसविनीम् । ततः पुत्रार्थं द्वितीयां विन्देत । तस्या-तिक्रमे शुल्कं स्त्रीधनपथं चाधिवेदनिकं दद्यात् । चतुर्विंशति पणपरं च दण्डम् । Arthaśāstra 3.2.38-39

⁵¹ शुल्काध्यक्ष शुल्कशालाच्चर्जं च प्राङ्मुखं उदङ्मुखं वा महाद्वाराभ्यां निवेशयेत् । शुल्कादायिनबत्वार पञ्च वा सार्योपयातान् नणिजो लिखेयु- "के कुतस्त्याः क्रियत्यण्याः क चाभिज्ञानमुद्रा वा कृता" इति । अमुद्राणामत्ययो देयद्विगुणः । कृदमुद्राणो शुल्काष्टगुणो दण्डः । Arthaśāstra 2.21.1-4

⁵² शुल्कभयात्पण्यप्रमाणं मूल्यं वा हीनं श्रुतस्तदतिरिक्तं राजा हरेत् । शुल्कमष्टगुणं वा दद्यात् । Arthaśāstra 2.21.10-11

⁵³ वैवाहिकमन्वायनमौपयानिकं यज्ञकृत्यप्रसवनैमित्तिकं देवेज्याचौलोपनयनगोदानव्रतदीक्षादिषु क्रियाविशेषेषु भाण्डं मुच्छलकं गच्छेत् । अन्यथाचाहि नस्तेयदण्डः । Arthaśāstra 2.21.18-19

Arthaśāstra maintains rules regarding debts in order to prevent exploitation of common people by the money lenders and to ensure fairness in transactions. Kauṭilya viewed usury as the offence and prescribes punishment in case of charging higher rate of interest than what was fixed by state. Kauṭilya lays down ‘one Paṇa and a quarter is the lawful rate of interest per month on one hundred Paṇas, five Paṇas for purposes of trade, ten Paṇas for those going through forests, twenty Paṇas for those going by sea.’ However, if one charges beyond this, the lowest fine would be imposed and half the fine for witnesses as well⁵⁴ (Arthaśāstra, 3.11.1-2). If an individual claims interest when it is not due, the fine would be four times the amount under disputes. Of this fine, the creditor would pay 3/4th and the debtor 1/4th.⁵⁵ (Arthaśāstra, 3.11.8-9) Kauṭilya mentions that these debts were not to increase in certain circumstances, such as in the case of a person confined in a long sacrificial session or suffering from illness or in the preceptor’s house, as well as in the case of a minor or an insolvent⁵⁶ (Arthaśāstra, 3.11.10).

1.13. Offences related to Verbal Injury or Vākpāruṣyam:

In the Arthaśāstra, defamation, vilification and threat constitute Verbal injury. It is not simply viewed as detrimental to an individual’s reputation or character, but also acknowledged as a felonies and punishments were laid down for transgression. Kauṭilya outlines, if an individual defames another affecting to their body, character, learning, profession and country were subjected to monetary punishment. For instance, if an individual slander another based on their physical appearance, such as one-eyed, lame and so on, as such on the basis of the factuality of the imperfection, the offender shall be subjected to punishment, wherein 3 Paṇas would be fined if the said defect is true, whereas doubled the fine (6 Paṇas) in case of an untrue accusation of the defect⁵⁷ (Arthaśāstra, 3.18.2). In fact, passing comments, masquerading as compliment to physically challenged person were also deemed as an offense.⁵⁸ Kauṭilya distinctly further sets fine pertaining to libel, on the basis of an individual’s Varṇa. If the person from a lower caste abuse anyone from the higher Varṇa, the fines imposed were increase from 3 Paṇas upwards. However, if an individual from a higher Varṇa abuses one of a lower Varṇa, in such case fines imposed to be decrease from 2 Paṇas. Additionally, use of disdain expression such as “A bad Brāhman” was also treated as a felony and punished as above⁵⁹ (Arthaśāstra, 3.18.7). Arthaśāstra further suggests, the same rules to be applied in the case of slander against learning of professional story-tellers (śruta), the profession of buffons (vāgjīvanānām), artisans, musicians and actors, and libel of the country of those from Prājñūnaka, (Kangle, 1960, 247)⁶⁰ Gāndhārā and so on⁶¹ (Arthaśāstra, 3.18.8). The text also prescribes a lowest amercement to

⁵⁴ मपादपणा धर्म्या मामवृद्धिः पणशतस्थः । पञ्चपणा व्यावहारिकी । दशपणा कान्तारकाणां ।

विंशतिपणा सामुद्राणां । ततः परं कर्तुः कारयितुश्च पूर्व-साहसदण्डः । श्रोतृणामेकैकं प्रत्यर्थदण्डः । Arthaśāstra 3.11.1-2

⁵⁵ अकृत्वा वृद्धिं साधयतो वा मूल्यं वा वृद्धिमारोप्य श्रवयनो बन्धचतुर्गुणो दण्डः । तुच्छचतुरश्रावणायामभूतचतुर्गुणः । तस्य त्रिभागमादाता दद्यात् । शेषं प्रदाता । Arthaśāstra 3.11.8-9

⁵⁶ दीर्घसत्रव्याधिगुरुकुलोपरुद्धं बालमसारं वा नर्णम नुवर्धेत । Arthaśāstra 3.11.10

⁵⁷ शरीरप्रकृतिश्रुतवृत्तिजनपदानां शरीरोपवादेन काणखञ्जं विभिस्ससे त्रिपणो दण्डः । मिथ्योपवादे षट्पणो दण्डः । Arthaśāstra 3.18.2

⁵⁸ For details see Arthaśāstra 3.18.3, 3.18.4-5

⁵⁹ प्रकृत्यो पवादे ब्राह्मणक्षत्रियवैश्यशूद्रान्तावसायिनामपरेण पूर्वस्य त्रिपणोत्तरा दण्डाः । पूर्वेणापरस्य द्विपणाधराः । कुब्रा ह्यणादिभिश्च कुत्सायाम् । Arthaśāstra 3.18.7

⁶⁰ Kangle explains, ‘Prajñunaka: reads Pragghunaka explained as ‘the kingdom of the Candalas.’ Cs renders this reading by ‘the Eastern Huns.’ That seems doubtful. At any rate, finding a reference in this to the Huns under Toramana and drawing a conclusion from that as to the date of this work (Pran Nath, 1A, 60,121) seem hardly justified. Prajñuna may be Prakrit for Prarjuna, perhaps related to the Arjunayanas of the inscriptions.’ p.247

⁶¹ तेन श्रुतोपवाद, वाज्जीवनानां कारुकुशीलवानां वृत्त्युपवादः, प्राञ्जूनक गान्धारादिनां च जनपदोपवादा व्याख्याता । Arthaśāstra 3.18.8

an individual who defame own nation or village. While, middlemost fine in case of reviling own caste and assembly, but above these highest fines to be imposed for reviling gods and sanctuaries⁶² (Arthaśāstra, 3.18.12).

1.14. Offences against property:

By this time a sense of ownership, including both private and state or movable or immovable property was already integrated into the society in a full-throated manner. It was viewed as an offence if an individual acts against the regulations pertaining to it. It is noteworthy how Kauṭilya had discussed about women's property in a detailed manner and law concerning to women's property. According to Arthaśāstra, means of subsistence (vritti) or jewellery (abadhya) constitutes what is called the property of a woman. With regard to Vritti, woman was endowed maximum 2000 Paṇas and as far as jewellery was concerned there was no limit (Arthaśāstra, 3.2.14). There were no restrictions if a wife decides to use this property for the maintenance of her son, daughter in law or on herself, if there were no provisions made by her husband for her maintenance while he is away on a journey. Besides, husband was also allowed to use this property in certain circumstances, such as in case of calamities, disease, famine, robbers, religious acts and other dangers. It was also exception in the case, if it was being used by both husband and wife with mutual consent, who have brought forth son and daughter. Neither wife will question, if the property has been used for three years, in case they married in accordance with first four forms of marriage i.e. Brāhma, Prājāpatya, Arṣa and Daiva. However, we may observe that, these were acceptable only in the first four marriage and not permissible to other forms. If it was used in the Gāndharva or Asura marriages then husband was obligated to made them return both with interest. Whereas, in the case of Rakṣasa and Paiśāca marriages, husband would be panelised on the ground of theft (Arthaśāstra, 3.2.16-18).⁶³ In Arthaśāstra, a sudden and direct seizure of person or property is termed as Sāhasa and fraudulent or indirect seizure (niranvaye stheyamapavyathane ca) was considered as theft⁶⁴ (Arthaśāstra, 3.17.1-2). According to Kauṭilya a house, a field, a park, an embankment, a tank or a reservoir constitutes an immovable property⁶⁵ (Arthaśāstra, 3.8.2). It appears that causing damaging to the wall of another's house was treated as an offence, for which the fine would be 12 Paṇas, whereas for ruining it with urine or dung, the fine would double (Arthaśāstra, 3.8.22). For the seizure of large fields, houses, gold, gold coins, fine fabrics etc., the middle amercement ranging minimum of forty-eight Paṇas and a maximum of ninety-six Paṇas would be imposed⁶⁶ (Arthaśāstra, 3.17.8). Kauṭilya advises that the robbers and house thieves should be impale on the stake for transgression and if anyone attempts to remove them from the stake, he too would be subjected to same punishment (Arthaśāstra, 4.11.7-8). If an individual breaks a sealed house, an amercement of 48 Paṇas would be fined for transgression (Arthaśāstra, 3.20.15). If a person steals a cart, a boat or a small animal, the offender's one foot would be cut off or had to pay a fine of 300 Paṇas⁶⁷ (Arthaśāstra, 4.10.8). The Arthaśāstra shows a strict attitude not only towards thieves, but also prescribes punishment equally to those who aids thieves and considered par with them, while suggesting a fine of

⁶² स्वदेशग्रामयोः पूर्वं मध्यमं जातिसङ्घयोः । आक्रोशादेवचैत्यानां उत्तमं दण्डमर्हति । Arthaśāstra 3.18.12

⁶³ Arthaśāstra 3.2.16-18, for further detail study on the women's property refer to Arthaśāstra Chapter-3.2

⁶⁴ साहसमन्वयवत्प्रसभकर्म । निरन्वये स्थेयमपव्यथने च । Arthaśāstra 3.17.1-2

⁶⁵ गृहं क्षेत्रमारामस्सेतुबन्ध स्तटाकमाधारो वा वास्तुः । Arthaśāstra 3.8.2

⁶⁶ ताम्रवृत्तकंसकाचदन्तभाण्डार्दानां स्थूलद्रव्याणां अष्टचत्वारिंशत्पणावर षण्णवतिपरं पूर्वस्साहसदण्डः Arthaśāstra 3.17.8

⁶⁷ चक्रयुक्तं नावं क्षुद्रपथं वाऽपहरत एकपादद्वयः त्रिशतो वा दण्डः ॥ Arthaśāstra 4.10.8

500 Paṇas or cutting off of ears and nose⁶⁸ (Arthaśāstra, 4.10.10). Likewise, there are as many other miscellaneous offences, however, yet again it is insurmountable to discuss each and everything in comprehensive manner, and this study has thus mainly attempted to categorised significant offences. Overall, no less than modern jurisprudence, it is commendable how Kauṭilya had touched upon plethora of crimes and its consequences dealing with various aspects in such a sophisticated manner as discussed above.

1.15. Conclusion

We cannot imagine a society completely in an equilibrium, void of inequity, oppression, transgression and the like without a law. It is very much likely that any lawless society or state would lead to a state of anarchy. Even the mother nature aligns with its cosmic rhythms and regulations, whenever an attempt was made to come out of this equation, time and again, the world has turned into a pandemonium. A law vacuum in any state is thus deleterious for the proper orchestration of state machinery and to maintain an equity. Since millennia, people fathom the gravity of regulations and adhered to it. As society made an advancement from the tribal to settled agrarian, and as of by today an industrial one, accordingly judiciary has also been revolutionised. In ancient India, a number of written textual records can be found propounded by various ancient law givers. During the course of this study, we may find that the Hindu Criminal law in particular is evolutionary in nature and represents a various stage of developments. By the time of Kauṭilya, it appears that the law became more developed and inclusive. It is very much plausible that Kauṭilya did not fail to incorporate almost every issue and social realities of his time and age, and enumerated offences and its corresponding punishments accordingly. He has proposed a punishment, which were both firm and harsh in nature, that ranged from mere mild admonition, fines to death penalty; either as simple death or accompanied by torture, some of which are found to be brutal in present sociological and humanitarian context. However, we need to understand that, these punishments were not awarded blindly. Kauṭilya advocated for a various factor, which was to be taken into consideration before inflicting punishment. At the same time, he also shows consideration towards certain individuals such as; women, those who are physically weak and starved, minor, poor and so on. The Arthaśāstra, thus reveals a legal system which was regulated proportionately, and Kauṭilya ahead of his time well documented all the spheres of crimes from minor to major one, and showcase much inclusivity and much structured and developed legal machinery.

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