

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 2

2022

© 2022 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at the **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Study of the Judiciary and Administration in Ancient India with Special Reference to Manusmriti and Arthashastra and its Relevance in Present Indian System

POOJA UMASHANKAR¹

ABSTRACT

The judicial and administrative systems are not any new concept to India. It can be traced to the Vedic period. India has one of the oldest judicial systems in the world. A study of Smritis and Shastras of various authors such as Manu, Narada, Kautilya shows that India had well developed administrative and judicial systems in the world. Their works involve a detailed explanation of the duties and powers of the ruler, how a kingdom had to be run including the penal system, taxation, family, succession etc. The Vedas, Shastras, Smritis all are an important source of Hindu law and are a part of their philosophical explanation. Manusmriti by Manu and Arthashastra by Kautilya are some of the greatest works which have depicted the rules of functioning of states both in the administrative and judicial sphere. The study of these works will give us a clear picture of how efficient was governance in the ancient Indian era.

The author will study the principles of both Manusmriti and Arthashastra and try to analyse how the administration and judiciary functioned in the ancient period. The research paper deals with the administration and judicial system in ancient India with reference to Manusmriti and Arthashastra. The paper will give a better understanding of the views of Manu and Kautilya regarding the functioning of a state.

I. INTRODUCTION

Ancient India was not only rich in knowledge of medicine, astronomy, literature, mathematics etc but it also had the presence of a strong administrative and judicial system. The evidence for this is the huge number of legal literature written in ancient India, most of them which are written in Sanskrit. The ancient sources of Hindu law are the Shrutis, Smritis, digests and commentaries and the customs followed from time immemorial.

The Manusmriti and Kautilya's Arthashastra are two great works that provide the rules for

¹ Author is a LLM student at CMR School of Legal Studies, Karnataka, India.

good judicial and administrative governance of a state. The first part of the paper deals with the judiciary and the administration of the state as mentioned in the Manusmriti and also tries to analyse whether these principles that are given in the Manusmriti are relevant in today's scenario also.

The second part of the paper deals with the Kautilyan Arthashastra which is considered as one of the greatest works on administration. The paper analyses the functioning of the judiciary and the administrative body in the Kautilyan period and also tries to find if the traces of the Arthashastra are present in the laws practised today.

II. CONTENT

(A) Manusmriti

Manu is considered the author of the 'Manusmriti'. Manu is the leader of a kalpa which in it includes fourteen manvantaraas. The Manusmriti is the most important ancient text regarding law and administration among the several Dharmashastras of Hinduism. It was one of the first Sanskrit texts that were to the English language during the British reign in India during the year 1794, by Sir William Jones. According to the Shantiparva of the ancient Hindu epic, The Mahabharatha, is a blessing to a prayer to God Brahma, by the people for a king to look after them, Brahma appointed Manu. . Manu had organized a very strong, systematic and efficient judicial and administrative system. In Manusmriti India or the Bharath has been regarded as a single unit and also considered a sacred territory by the people living there. Chapter II verse 17 says that the land is a creation of god which lies between the Saraswati and Drishadvathi rivers. Chapter II verse 21 says that the Madhya Desha is the land between the Vindhya and Himalayan mountains. Chapter II verse 22 says that the land between the eastern and western oceans is known as the Aryavarta.²

1. Judicial System

Manu in his manusmriti has used the word 'Dharma' which means law. He considers it supreme and very much necessary to control and regulate the affairs of any state. He considers the king as the protector of Dharma. Chapter II verse 4 says that every action of a man has some desire behind it and the actions of a man are the results of his desires. Thus these desires need to be Manu has classified laws into three types :

- Kula Dharma: The power was given to every family to frame laws for itself. The rules included the rules of conduct, the practising of religion etc.

² Justice M. Rama Jois, Ancient Indian Eternal values in Manusmriti : law p3

- Jaati Dharma: On the basis of the occupation there was the classification of people into four groups. They had their own representatives and conducted their internal affairs in an independent manner.
- Desha Dharma: The law of the land. All had to abide by this law³

While speaking about Dharma, Manu has not mentioned the term Hindu anywhere. It is just analysed as a code of conduct. It is applied to those who do not believe in God and who do not belong to any religion also. Chapter IX, verse 99 of the Manusmriti says that the Vedas constitute the first and the foremost source of Dharma Any rule that is framed and is found inconsistent with the fundamental rules in the Vedas will be rejected and be termed as Adharma. ⁴ It was the duty of the king to see that the laws were not against the customary laws too. Manu says King is the representative and symbol of the judicial system. He says “Justice, being violated, destroys; justice being preserved, preserves; therefore justice must not be violated, lest violated justice destroys us.”⁵

Comparing this with our present constitution, a similar meaning can be found in Article 13. Article 13 says that no laws can be made which are inconsistent with the fundamental rights guaranteed. The legislature cannot pass any statute or law which is ultra vires to the constitution, if done it can be challenged. The concept of Dharma can be understood as the constitution, and as mentioned by Manu no rule can be framed which is against the supreme law.

Chapter XII verses 3 to 7 say that the mind is the main instigator for all the acts done by a man. They are connected with and done by the body. Manu considered that the mental state is playing a very important role in determining the kind of activities done by a man. This also has relevance in our present laws, especially the Indian penal code where the presence of mens rea is an essential ingredient of a crime. Any act cannot be treated as a crime without the establishment of the motive for committing it.

According to Manusmriti, the king has been granted the final authority to give the punishment. All types of elements do fear this power and all the states have to abide by it. In chapter VII verse 15 Manu says that punishment is capable of controlling human weakness. Chapter VIII verse 44 says that during judicial proceedings the King must pay full attention to the truth, to the object, to the witness and also to himself. Before deciding the king must ascertain the

³ Rao, KSS(2005) *Manu's ideas on administration*, Indian Journal of Political Science

⁴ Justice M. Rama Jois, *Ancient Indian Eternal values in Manusmriti : law* p 17

⁵ Rao, KSS(2005) *Manu's ideas on administration*, Indian Journal of Political Science

motive, nature, time and place of the crime. Manusmriti also speaks about the quantum nature of punishments to be given. It says that the judges had to possess compassion. He strongly condemns all crimes to be punished in a similar manner. Chapter VIII verse 304 of the Manusmriti says that punishments can be in the form of admonitions, fines and last being chastisement.⁶

This concept of Manu can be seen in the present Indian scenario where the Evidence Act clearly prescribes the procedures for the witnesses, their examinations etc. There are also different punishments awarded for various crimes as mentioned in the IPC and also schedule 1 of the CrPC which include punishments from fines to that of capital punishment.

Chapter VIII verse 45 conveys that the king who punishes those who do not deserve it shall receive hell. Manu protected the interests of the innocent ones. He condemned the arbitrary imposition of punishments. This is in accordance with the commonly known principle followed in our country presently that is “even if a hundred criminals are let free, not even a single innocent must be punished”.⁷

Manu does not give absolute power to the King. He imposes certain limitations by saying that the king has to completely involve himself in the service of the people of his state and if he destroys the Dharma he shall be incapable of serving and ruling the people.⁸ This principle can be witnessed in the present scenario through the system of checks and balances.

Manu also says that the king shall not be the sole interpreter of laws during any judicial proceedings. There shall be a bench of three Brahmanas for the interpretation of the smriti laws.

2. Administration:

Manu has prescribed the position and duties of the king as an arbitrator, adjudicator and most importantly the supreme administrator of the state. Though he is the supreme administrator he is not solely vested with the power to interpret and execute the laws. There had to be a bench of 3 Brahmanas who interpreted the smriti laws and the Kshatriyas were vested with the power to execute them.⁹ The idea of division and separation of powers can be traced back here, which is followed now in almost all democratic countries including India.

According to Manu, the King shall protect the inherited property of a minor, until he has

⁶ Sanjeev Kumar Sharma, Taxation and Revenue Collection in Ancient India , p 69

⁷ Ibid

⁸ Meena, Sohan Lal. “RELATIONSHIP BETWEEN STATE AND DHARMA IN MANUSMIRITI.” The Indian Journal of Political Science, vol. 66, no. 3, Indian Political Science Association, 2005, pp. 575–88

⁹ Rao, KSS(2005) *Manu's ideas on administration*, Indian Journal of Political Science

returned from the Acharya's house¹⁰. Here it means that until he has completed his complete education and is now capable of taking care of himself and making prudent decisions, the king shall protect his property. In the present scenario, this concept can be found under various laws including the TP Act, guardianship, contract laws etc, where the minor's interests are to be protected by the state.

Manu also describes the servants connected with the government. Chapter VII verse 62 says that the administrative staff must consist of those who are skilful, noble and honest. The people who possess these qualities must be given responsible positions. Chapter VII verse 54 says that the king should appoint ministers based on their nobility, righteousness and competence.¹¹ Today in our country all these qualities are tested before appointing a person into the civil services. They have to clear the toughest exam to enter into the services, thus picking the best out of the lot to serve in the administration of the nation.

Manu says that the servants of the king are often found to be cunning and deceitful. Thus Manu says that the King has to excommunicate corrupt servants who receive unlawful gratifications and also confiscate their goods. The provisions for the civil servants, The Prevention of Corruption Act, the appointment of Lokpal all serve similar purposes.

(B) Arthashastra

Most sources of Indian tradition agree that Kautilya had destroyed the Nanda dynasty and installed Chandragupta Maurya on the Magadh throne. The name Kautilya denotes his gothra Kutila, since he was the son of Chanaka he came to be known as Chanakya and his original name was Vishnugupta. Kautilya's Arthashastra is the most important work on ancient India's public administration. Kautilya has acknowledged that his Arthashastra is based on similar treatises of the past. The text has the mentions opinions of Brihaspati, Ushanas, Manu, Parasara, Ambi, Vishalaksha and Bharadwaja.¹² Arthashastra has 150 chapters which are distributed into 15 books.

1. Judicial system:

Kautilya says that the law of the state has to be in the possession of the king. He calls the king 'Swamin' who is the supreme authority of the land. Kautilya's judicial system was called the Dandaneeti which means the science of enforcement of the law. The Arthashastra deals with

¹⁰ Sanjeev Kumar Sharma, Taxation and Revenue Collection in Ancient India, p 68

¹¹ Dr. N. Shivakumar, *Corporate governance and Organisation behavior, Guidelines from Manusmriti*, ICBF 2006

¹² L.N. Rangarajan, The Arthashastra 1992 P4

both civil and criminal law.

According to Arthashastra, in the places where the districts had met three members acquainted with the sacred rules of land and 3 amatyas or ministers of the king shall carry on the judicial administration.¹³ Kautilya says that the judges will have to settle all the disputes arising free from all kinds of circumstances, with minds unchanged in all moods or circumstances, pleasing and affable to all.¹⁴

For the enforcement of the law to be effective, three principles had to be strictly adhered to:

- a. The honesty of the law enforcers
- b. The proportionality of the punishment awarded
- c. Judicial fairness.

According to Kautilya, there were four bases for the administration of justice

- a. Dharma: which denotes the law of the land
- b. Evidence
- c. Customs followed from a long period of time in the society
- d. Royal edicts.

Civil courts were termed as Dharmasthiyas and decided cases relating to agreements, marriages, gifts, sale, inheritance, succession etc. Criminal courts were known as Kantakashodhanas and dealt with cases relating to rape, robbery, murder, theft etc. The Supreme court was the main court and it was presided over by the King. This type of division of courts is still prevalent in India where there are different courts for civil and criminal cases. They have their own jurisdictions regarding territory and subject matter.

Kautilya's Arthashastra has given prime importance to the evidence in judicial proceedings. He says "For whether a complaint is lodged first or last, it is the evidence of witness that must be depended upon. In the absence of witness the circumstances connected with the quarrel in question shall be taken as evidence".¹⁵ Conclusive proof was essential before sentencing a person. This doctrine is followed in Indian jurisprudence as "innocent until proved guilty". This concept is relevant in today's time too. The Evidence act also has dealt with the circumstantial evidence in section 106.

Kautilya believes that the punishment awarded must be proportional to the crime committed.

¹³ R. Shamashastry, Kautilya's Arthashastra p 213

¹⁴ Ibid., p 284

¹⁵ , R. Shamashastry, Kautilya's Arthashastra, p 279

Different punishments are prescribed for the crime of rape. Different quantum of punishments is given for guards who misbehave with women.¹⁶ The Indian Penal code has a greater quantum of punishments for the crimes committed on women by the ones who had a special responsibility to protect them.

Regarding contracts, all the agreements that are entered in the dead of night, in secret or by means of fraud shall be held void. This is also seen in the relevant provisions of the contract law practised today in our country.

Punishments were awarded to crimes relating to animal cruelty as well. Kautilya's judicial system had laws relating to pledges, mortgages, robbery, sexual offences, defamation etc.

For presumption of guilt in an offence, torture was considered a legal method. But there were certain sections of the society who were not to be subjected to torture under any circumstances. They were children, aged, sick, pregnant women.

2. Administration

Arthashastra is the most important and detailed book of monarchical administration in the ancient and mediaeval world. There is a wide range of areas covered under administration including central administration, provincial, regional, field and village administration, military administration etc. The hypothetical country according to Kautilya was a compact unit ruled by a king. Kautilya envisages a variety of features: the mountains, rivers, deserts, jungles, valleys and plains in the country.¹⁷

Kautilya believed the state to be of central importance in ensuring the proper and smooth conduct of affairs in society. He propounded the 'Saptanga theory' which gives the detailed categorization of the various elements in the state. The elements of the state according to him are:

- a. The Swamin or the king is the most crucial element. An ideal king must possess great leadership qualities. Kautilya says " In the happiness of his subjects lies his own happiness"¹⁸
- b. The Amatya or minister is the second most important element. They had to be highly brilliant and the king must seek the advice of his ministers.
- c. Janapada or the people of the country must be loyal to the king and must be prosperous and capable enough to pay the taxes.

¹⁶ L.N. Rangarajan, *The Arthashastra*, 1992 p51

¹⁷ L.N. Rangarajan, *The Arthashastra* p 28

¹⁸ *Ibid* p 70

- d. The Durga or the fort represents strength and was acting as a protective shield to the kingdom.
- e. The Danda or army was comprised of soldiers who were well organized and capable enough to protect the country from external aggression.
- f. The Kosha or treasury must be sufficient enough to conduct daily affairs of state, maintain the army. It was filled by the taxes collected.
- g. The Mitra or allies played an important role and were valuable in difficult times.

In the list of officers, Kautilya has classified them into thirthas. They are Mantris, Purohit, Senapati, Yuvaraj, Duvarika, Antaravamsika, Prasastri, Samaharta, Sannidhata, Pradeshta, Nayaka, Paur, Karmantika, Mantri parishad Adhyksha, Dandapala, Durgapala, Antapala and Ativahika.¹⁹

The ministers were chosen on the basis of merit, the qualities that were more prized were proven loyalty and noble birth. Kautilya writes “ Native, born of high family, influential, bold, skilful, free from procrastination....these are the qualifications of a ministerial office”²⁰

Kautilya advocated the concept of trade and believed that it would assist in the flourishing of the kingdom. He favoured the relationships with the southern rulers more than northern rulers due to their higher possession of wealth. He says “ Possessing immense gold is better than a friend ruling over a vast population for armies and other desired objects can be purchased with gold”²¹ He also says that there must be just and fair prizes and demanded heavy laws to avoid monopolies. This concept can be observed in today’s competition act.

The Kautilyan taxation system is very similar to that of Adam Smith’s canons of taxation. He included the principles of convenience to pay, ease to be calculated, fair and justifiable in his taxation policies. Kautilya says that a prosperous and stable kingdom must have a well developed and administered tax system as its foundation.²²

Kautilya gives a list of weaker sections in the society who required special care and protection such as free travel on ferries, the special responsibility of judges on matters concerning them. He also gives special emphasis on the welfare of women and the protection of children from slavery and bonded labour.²³ These principles have been envisaged in the Indian Constitution

¹⁹ Prof. B.L. Fadia and Dr. Kuldeep Fadia, Public administration in India, p 10

²⁰ *ibid*

²¹ WALDAUER, CHARLES, et al. “Kautilya’s Arthashastra: A Neglected Precursor to Classical Economics.” Indian Economic Review, vol. 31, no. 1, Department of Economics, Delhi School of Economics, University of Delhi, 1996, pp. 101–08

²² *ibid*

²³ L.N.RANGARAJAN, THE ARTHASHASTRA 1992 72 Rangarajan, The Arthashastra 1992,p 72

by articles 14,15 and in the DPSP.

The scope of the ministerial work included enunciating new policies, supervising taxation, ensuring proper education and training to the princes, regulating foreign trade etc.

III. CONCLUSION

Though both the Manusmriti and the Arthashastra by Kautilya are not in force in the present age, what must be appreciated is their insight on the concept of judiciary and administration of a state. Many of the principles, doctrines and concepts are still seen in the present judicial and administrative system, This shows their forethought on the concept of a state. The dates of the writing of both Manusmriti as well as the Arthashastra are not confirmed, but it can be said that the Arthashastra dates back to nearly 1500 years ago and the Manusmriti even more. For documents written long ago to be prevalent even in the present time is a huge feather on the cap for India. It shows the brilliancy of the ancient scholars and also gives us a clear picture of how the states were functioning in ancient times.
