

JUSTICE AND PUNISHMENT: A CRITICAL STUDY ON THE ETHICS OF KAUTILYAN *DAṆḌANĪTI*

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Abstract

In Kautilya's Arthaśāstra, the third and the fourth adhikaraṇa deal specifically with the law and order of his administrative theory. The third adhikaraṇa is known as dharmasthīya, concerning the judiciary and the officials, while the fourth adhikaraṇa is referred to as kantakasodhana, that is, repression of criminals. Kautilya subscribed to a theory of the maintenance of law and order by the government through punishment, referred to as daṇḍanīti. His penal system is based on a complex interplay between monetary and physical punishments. The combination of monetary penalties and corporeal punishments speak of a certain balance that is much necessary to execute convicts of various forms and strata. The implementation of exemplary punishments, including capital punishment speak of the fact that justice has to be restored by any means, even it be by instilling fear in the minds of the people. This might raise the issue of using the offender as the means to keep the society disciplined. Further, and the most important feature of Kautilya's system of justice is that the King and the concerned officials are trained in ānvīkṣikī (the science of logic and enquiries into truth), based on dharma, that is, righteousness. Thus, Kautilya, one of the greatest visionary of statecraft and politics of all times, successfully establishes a code of law for the commoners, as well as the powerholders, that ensure the repression of crime as far as practicable, and accordingly, the maintenance of a just state.

Keywords: *ānvīkṣikī, daṇḍanīti, dharma, justice, punishment*

Crime is an undeniable aspect of human society. From time unknown human beings have tried to execute force, brutality and violation and/or infringement of rights of others. Thus, to curb such propensities in human beings, and to maintain law and order in the society, it becomes an imperative to inflict penalties and punishments in some form or the other on the offenders. In Kautilya's *Arthaśāstra*, the third and the fourth *adhikaraṇa* deal specifically with the law and order of his administrative theory. The third *adhikaraṇa* is known as *dharmasthīya*, concerning the judiciary and the officials, while the fourth *adhikaraṇa* is referred to as *kantakasodhana*, that is,

repression of criminals. Kautilya subscribed to a theory of the maintenance of law and order by the government through punishment, referred to as *daṇḍanīti*. His penal system is based on a complex interplay between monetary and physical punishments, which is necessary to curb crimes and offences of various forms and gravity. Inflicting punishments however appropriate or inappropriate often raises the issue of using the offender as an example before the community to prevent them from committing acts. Thus, the ethical issue of using an individual as means, and not as ends-in-themselves, keeps on posing moral questions. Such questions cannot be straight away overlooked. However, one of the most significant features of Kautilya's system of justice is that the King and his officials are trained in the science of logic and enquiries into truth. It is founded on critical examination and outright righteousness. The following article, thus, endeavors to explore Kautilya's vision of statecraft in the context of law and order, and to examine the efficacy of his penal system in establishing and maintaining justice in the society,

I

Categories of the Theories of Punishment

The paper in question is aimed at dealing with the various forms of punishment prevalent in the society, and accordingly, to research on what kind of punishment system is observed in Kautilya's *Arthaśāstra*. Further, certain ethical questions have been raised regarding the penal system, and critical remarks have been put forth on the issue.

The forms of punishment have been categorized as follows –

- Retributive Theory
- Deterrent Theory
- Preventive Theory
- Incapacitation Theory
- Expiatory or Compensatory Theory
- Reformatory Theory
- Utilitarian Theory
- Multiple Approach Theory

Retributive Theory:

This theory is also called the 'Theory of Vengeance'. It is based on the doctrine of *Lex talionis*, that is, 'an eye for an eye'. Usually it involves a combination of criminal law and moral law. It involves either of the following approaches –

Doctrine of Societal Personification:

‘When a member of the society is subjected to a very heinous crime, as a result of which, the whole society, as if it were a natural person, considers the offence to be inflicted upon itself, comes to the defense of that person either by way of demanding justice or by conducting the same on its own, the society is said to be personified.’¹

Doctrine of Correctional Vengeance:

‘When the society, in a fit to get justice, demands the concerned authorities to inflict vengeful (as painful as the original act, or even more) punishments upon the victim for creating a deterrent, it is said to exhibit correctional vengeance.’¹

Deterrent theory:

The term ‘deter’ means to abstain from or to be compelled to abstain from committing wrongful acts. The main aim of this theory is to ‘deter’ (to prevent) individuals from committing any crime or repeating similar kinds of crime in future. The objective is to prevent crime by instilling fear in the minds of individuals. By punishing the wrongdoer, the intent is to set an example before the entire society, in order to restrict them from committing such acts. The intent of this form of punishment is exemplified as J. Burnett, had said to a prisoner - “Thou art to be hanged not for having stolen a horse, but in order that other horses may not be stolen”.¹

Social contract thinkers like, Thomas Hobbes (1588-1678), Cesare Beccaria (1738-1794), Jeremy Bentham (1748-1832) are believed to have provided the foundation for modern concept of deterrence theory in criminology. According to them, the marks of deterrence should be based on severity, certainty and celerity. That is, the nature and intensity of the punishment should be based on the gravity of the crime. Also, punishments should be precise, definite and should never be delayed, in order to ensure justice to the victim. Further, in Austin’s theory, we find that, “*Law is the command of the Sovereign*”.¹ He held that people will follow the law because people have a fear of punishments. Thus, in his imperative theory, he stated three things that are important in preventing crime and establishing justice, as follows – sovereignty, command and sanction.

Preventive theory:

The theory aims at preventing probable crimes by disabling the wrongdoers. The primary objective is to transform the convicted, either permanently or temporarily. This theory supports death sentence or life imprisonment etc. depending on the gravity of the crime. The disablement may be of two types - temporary confinement and permanent confinement in the prison. It suggests that imprisonment is the best mode of crime prevention, as it seeks to eliminate offenders from society, thus disabling them from repeating crimes.

Incapacitation Theory:

The word 'incapacitation' means to take off someone's power or strength in some particular matter, in order to prevent future offences committed by them. It is defined as follows - "Incapacitation refers to the restriction of an individual's freedoms and liberties that they would normally have in society."¹ Incapacitation is executed mostly by removing the person from the society, (temporarily or permanently) through imprisonment, deportation *etc.* One of the most common ways of incapacitation is incarceration of the offenders. In severe cases, capital punishments are also applied. The theory of incapacitation is most commonly observed in cases where the outlaws are either sentenced to prison or to life imprisonment. However, it also includes those who are being supervised by the police departments within the community, like those on probation and parole.

Expiatory or Compensatory Theory:

The main aim of punishment, according to this theory, is to penalize the offenders, and/or to seek their reformation and rehabilitation with all the resources and goodwill available through the courts and other government and non-government organizations. It must be seen that the offenders are duly judged for their crimes, and also the harassment caused to the victim and towards their family members and property are to be compensated. The followers of this theory claim that the object of punishment is to produce guilt in the mind of the offender. If offenders, after committing an offence, realize their guilt, then they must be shown mercy. In other words, the theory relies on compensation to the victim for the loss caused by the accused. In this way, the offenders are made to realize the same sufferings they have caused to the victim.

Reformative Theory:

It is a somewhat humanitarian approach to dealing with crimes. It is based on the idea that, even though an offence has been committed by an individual, under certain circumstances, the basic rights of the individual, at least for the sake of being a human, are to be taken care of. The practice focuses on reforming the wrongdoers and to bring them back to the society as good and law-abiding citizens. One could say that it is based on the Gandhian principle - 'Hate the sin, not the sinner'.¹ Reformative theories of punishment are mostly applied in case of juveniles. Skills training, counseling *etc.* are provided to the offenders during their period of confinement with the aim that they might start a new life after their serving period.

Utilitarian Theory:

The utilitarian approach to dealing with crimes is based on the principle of 'greatest good for the greatest number'. In this case, laws are implemented to ensure

the good of the society, in the interest of the larger section of the community, as far as practicable. The utilitarian principle being teleological in nature, it holds that crimes and wrongdoings directly hamper the harmony of a society. Hence, offenders are to be kept aloof. And, punishments are to be inflicted accordingly, as to restore and ensure the good of the society at large, rather than individual rights and concerns.

Multiple Approach Theory:

In order to establish law and order in the society and to implement effective justice, often the judiciary needs to seek resort to a combination of more than one theories of punishment. If a single theory fails to meet the objective, then multiple approaches are to be sought for. We find reflection of that in Kautilya's system of law and justice (*daṇḍanīti*), as laid down in his *Arthaśāstra*. The following parts would discuss the above from an ethical perspective, in terms of *rājadharmā*. The prime ethical question is that whether inflicting an individual (though an offender) with exemplary punishment, justifies the position as not using them as means, but as ends-in-themselves (in the Kantian sense).¹

II

Law and Administration in *Arthaśāstra*

Kautilya based his penal system on a complex interplay between monetary and physical punishments. He subscribed to a theory of the maintenance of law and order by the government through punishment, referred to as *daṇḍanīti*. *Arthaśāstra* consists of 15 *adhikaraṇa* and each of it is divided into several *adhyāya* dealing with various aspects of administration. Issues of crime and punishment are found all along. However, the third and the fourth *adhikaraṇa* deal specifically with the law and order of his administrative theory. The third *adhikaraṇa* is known as *dharmasthīya*, concerning the judiciary, and the fourth *adhikaraṇa* is referred to as *kantakasodhana*, that is, repression of criminals. Here, the officials are termed as *pradeṣṭṛ* who are at par with the police, magistrates and the like of modern times.

Kautilya identified four purposes of *daṇḍanīti*-

- Acquisition of the non-acquired
- Preservation of the acquired
- Augmentation of the preserved
- Fair distribution of the augmented

In the verses of *Arthaśāstra*, we further find that -
 'apraṇitastumātsyanyāyamudbhavayati/ (13)' and 'baliyānabalam hi
 grāsatedandadharābhāve/' (14) (1.4.13-14)

Here, Kautilya clearly states that in absence of a strong and appropriate ruler, the state would be an absolute anarchy, where the weak would be devoured by the stronger sections, just as in the fish kingdom. Thus, in order to ensure a just society and to keep the evildoers at bay, he founded a strong penal system consisting of prudent and erudite judges and officials responsible for trying the offenders.

Kautilya emphasized that no one was above the law. Checks and balances were clearly introduced for all public officials including extra fines and punishment for malpractice in public duties. The doctrine of *mātsyanyāya* was to be strictly checked in an administration. If proper law is maintained by the king, the weak would not have to succumb to the fancies of the powerful and thus, it constituted the responsibility of the state to protect the weak and follow the principles of justice. Also, the laws must be clear and concise and properly codified to ensure there remains no ambiguity or room for misinterpretation by judges and officials. Further, he held that the effectiveness of law enforcement depends on three factors –

- honesty of the law enforcer
- intensity and proportion of punishment as per the seriousness of the crime
- justice must not only be done but also be seen

Kautilya has formed an exhaustive and a comprehensive administrative cum judiciary system, in order to take care of as many aspects of the state as practicable. Accordingly, he prescribed the appointment of the following officials, *tīrthas*. The eighteen *tīrthas*, that is, the administrative and judiciary officials were –

- *mantrī*– Minister
- *purohita* – Priest
- *senāpati* – Commander of the Army
- *yuvarāja* – Prince
- *dvārika* – Chief of Palace Attendants
- *antaravamśika* – Chief of the King’s Guards
- *prasastr* – Magistrate
- *samāharṭṛ* – Collector General
- *sannidhāṭṛ* – Chief Treasurer
- *pradeṣṭṛ* – Commissioner
- *nāyaka* – Town Guard
- *paura* – Chief of the Town
- *karmānta* – Superintendent of Mines
- *mantrīpariṣadadhyaḥṣa*– Chief of the Council of Ministers
- *daṇḍpāla* – Officer of the Army Department
- *durgapāla* – Guardian of the Forts

- *antapāla* – Officer-in-Charge of Boundaries
- *aṭavīka* – Officer-in-Charge of Forests

Keeping the above structure in mind, let us now try to look into the nature of crimes and/or violations that had to be dealt with a, and also the functioning of the judiciary. The fourth *adhikaraṇa* deals with offences of different kinds which are to be tried by the magistrates. The seventeenth *adhyāya* of the third *adhikaraṇa* is called *sāhasa* which talks about the forcible seizure of other's property. This may be divided into three categories -

- One who takes away other's belongings by force in the presence of the owner
- One who takes away other's belongings in the absence of the owner, or in other words, theft.
- One who causes another to commit an act of force *etc.*

Further, in *Arthaśāstra*, we find that – ‘*pradeṣṭārāṣṭrayo mātyaḥkantakasodhanamkuryuḥ*’ (5.1). The said officials are usually three in number, and are of the rank of ministers, who carry out the suppression of criminals. The magistrates are required to keep watch over the artisans like blacksmiths and carpenters who work generally under guilds and receive materials from people for working for them; weavers, laundry people, tailors and goldsmiths, and others dealing with copper, lead, brass, bell-metal, tin, etc. Offences relating to physicians, musicians, actors and the like are also included in this section (4.1).

Constituency of the Court of Law:

Kautilya aimed at forming a bureaucratic system based on the merit and educational foundation of individuals. He appointed officials and magistrates based on their education, intelligent insights necessary for running statecraft appropriately, and righteous attitude towards establishing justice in the society. Thus, administrative courts consisting of three persons proficient in *Dharmśāstras* and three ministerial officers in the administration of law are mentioned in *Arthaśāstra*. A hierarchy of courts, - from the court catering to a group of ten villages to the King's court, was to be maintained. This reflects the decentralization of power to a certain extent, yet the absolute reign being in the hands of the ruler. The decentralization was also necessary in order to ascertain proper functioning of the village administration, catering to the needs of the province with immediacy and efficacy. *Arthaśāstra* contains references to a Code of Law. The code is set forth under seventeen heads, including marriage, property, slaves, theft, injury and assault. He identified four bases of law, as follows – *dharma* (sacred law), *vyavahāra* (evidence), *caritra* (history), *rājaśāsana* (King's edicts). In case of conflict, edicts would override other bases. In such cases, highly

prudent and insightful judges were to appointed, and the jury should be knowledgeable, discerning, kind, balanced and incorruptible.

Furthermore, *Arthasāstra* contains an elaborate scheme of punishment, not only for the commoners, but also for all kinds of officers to be followed in courts of law. Courts are of two types - civil and criminal. A judge was called *dharmastha* or upholder of justice indicating that ultimately the highest law of the land is *Dharma*. A bench of three magistrates or jury was responsible for the containment of anti-social activities. Though the remedies available in the Kautilyan state varied, in most cases fines were an adequate remedy, but there were also remedies of incarceration, torture and death. Depending upon the intensity or gravity of crime, punishments were divided into the following five categories - fines, mutilation of limbs, exportation from the kingdom, punishment for transgression and capital punishment.

Kautilya considered both kinds of crime, namely, *vākpāruṣya*, that is, verbal abuse and *daṇḍapāruṣya*, that is, physical harm, both the categories to be punishable. He held that maintaining law and order was the essential duty of government, and for that laws and punishments have to be administered, though there would remain a clear distinction between the administration of civil law and criminal law. Kautilya standardized four bases of justice, according to which any matter in dispute must be judged. Namely, -

- *Dharma*, based on truth
- Evidence, based on witnesses
- Custom, traditions *etc.* accepted by the people
- Royal edicts and/or the law as promulgated

In case of arrests, Kautilya spoke of three main grounds – on suspicion, on possession and for crimes such as murder. However, grounds for reasonability were laid down for each of the types of arrests. For example, an arrest on suspicion could only be made for certain crimes such as murder, theft, and corruption.

In order to implement the above statecraft, and to keep an eye on the proceedings of the outlaws and of the society at large, Kautilya used certain state machineries, referred to as *guḍhapuruṣa*. He considered it necessary, to ascertain the proper culprit or offender through direct accusation or otherwise. Kautilya prescribed that the King has to appoint persons in secret service (*guḍhapuruṣa*) (1.11.12). The secret agents could be classified into nine categories -

- Sharp pupils (*pragalbhacātra*)
- Apostate monk (*kāpaṭika*)
- Seeming householders (*grhapati*)

- Seeming traders (*vāṇijako* or *vaidehaka*)
- Seeming ascetic (*muṇḍoljaṭila* / *tāpasa*)
- Secret agents/ Espionage (*guptacara*)
- The bravo (*cara*)
- The poison-giver (*tikṣṇarasada*)
- Begging nun (*bhikṣukī*)

These were the secret agents employed to detect the evildoers, as well as the state of administration in the country. However, apart from the above, the statements of witnesses, and investigations through interrogation and torture were implemented to ascertain crimes in the society.

Another aspect that needs elucidation here is that, Kautilya did not overlook the fact that the individuals in power positions too could become corrupt due to various reasons. Thus, judges and other officials of power were also under the state surveillance. No judge was to threaten, intimidate, misrepresent or to fail on their ethical duties. In case of failure to do so, a hefty fine and even impeachment from office were implemented. Government officials involved in any corruption were to be severely punished. However, leniency was shown within the system only to those suffering from poverty, illness, hunger *etc.* and special circumstances of the person was to be taken into account while fixing the penalty.

III

An Ethical Analysis and Some Observations

An in-depth look into the tenets of *Arthaśāstra* depict that in many a cases, for the preservation of the state, Kautilya was convinced that governance rules could ignore the ordinary concepts of morality and implement evil means, in the form of spies, deceit, treachery, sex, violence and murder. If necessary for the good of society and the stability of the state, such means could be administered in order to protect the state. It is often argued that, Kautilya emphasized on the preservation of the King, rather than on the preservation of the state. It is a stance that cannot be condoned from the standpoint of modern day democracy.

It is further held by thinkers that both Kautilya and Machiavelli (in *Prince*, 1532) approached the problem of politics where separation of private morality from a public one of the same was necessary. Both held that the ends justified the means, where the end is the stability of the state, and the preservation of a strong king. In this context, it could be stated that, Kautilya held that the degeneration of a state was the direct consequence of misrule, ill-governance and lack of political vision. Thus, to prevent the above, he developed such principles of political conduct and good

governance that would cover all such contingencies, with a special focus on the law and order system of the society.

It is at this very juncture that the role of a highly educated ruler and his properly trained officials become significant. Kautilya states that – ‘*ānvīkṣikītrayīvārttānāmyogakṣemasādhanodaṇḍaḥ*’ (1.8.4.4). That is, the sole objective of punishment (*daṇḍa*) is for the purpose of establishing *yoga* and *kṣema*. *kṣema* is the preservation and augmentation of that which is already attained. In terms of statecraft, *yoga* and *kṣema* refer to the attainment of the unattained, that is, may be taxes, material wealth, land *etc.* and even justice. Further, the implementation of *daṇḍa*, in order to establish *yoga* and *kṣema*, are to be founded on the tripod of knowledge, that is, on *ānvīkṣikī*, *trayī* and *vārttā*. *ānvīkṣikī* is the science of enquiries into truth, and is the most significant basis of all kinds of knowledge. *trayī* indicates the study of the three *Vedas* - *ṛk*, *sāma* and *yajur*. And, *vārttā* refers to the study of business, commerce and agriculture. Thus, mastery over a holistic approach of knowledge based on incisive enquiries, were the fundamental requisites of the ruler as well as his magistrates and the other officials of high rank.

The above position is clearly reflected in *Arthaśāstra*, as the very first chapter of it is called *Vinayādhikārika* which is about the education of the King and/or the crown prince. Right from the beginning of *Arthaśāstra*, Kautilya states that the objective of this compendium is to groom the crown prince to rule righteously and to protect one’s kingdom and the subjects. As discussed above, Kautilya talks about the four kinds of knowledge (*vidyā*) that should necessarily comprise a prince’s education. These are *ānvīkṣikī*, *vedatrayī*, *vārttā* and *daṇḍanīti*. Of the four, Kautilya places the most significant emphasis on *ānvīkṣikī*. According to him, *ānvīkṣikī* is the lamp illuminating all knowledge, and it acts as the foundation and the means of all knowledge and actions. It is also considered as the foundation of all *dharmas*. This is expressed as - ‘*pradīpaḥ sarvavidyānāmupāyaḥ sarvakarmānām/ āśrayaḥ sarvadharmānām śaśvadānvīkṣikīmatā//*’.¹

On reaching upon the terminal point, we could emphasize on certain aspects as follows - Kautilya’s penal system portrays a rigorous and meticulous effort to prevent crimes of almost all sorts. The combination of monetary penalties and corporeal punishments speak of a certain balance that is much necessary to execute convicts of various forms and strata. The implementation of exemplary punishments, including mutilation of limbs, body markings, and capital punishment indeed speak of the fact that justice has to be restored by any means, even it be by instilling fear in the minds of the people. This might raise the issue of using the offender as the means to keep the society disciplined. However, one cannot deny the fact that any form of penal system

would subscribe to that in some form or the other. Further, and the most important feature of Kautilya's system of justice is that the King and the concerned officials are trained in *ānvīkṣikī*, that is, the science of logic and enquiries into truth, based on *dharma*, that is, righteousness. Also, certain leniencies that are observed in special cases, speak of the humanitarian approach of the legal system too. Thus, Kautilya, one of the greatest visionary of statecraft and politics of all times, successfully establishes a code of law for the commoners, as well as the power-holders, that ensure the repression of crime as far as practicable, and accordingly, the maintenance of a just state.

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