CHAPTER - 3

VIEWS OF MANU AND KAUTILYA ON THE ADMINISTRATION OF JUSTICE

The state performed its duty of protection of society and the individual through coercive enforcement of the standards of justice based on the concept of ‘Dharma’. From the Vedic period onward, the perennial attitude of Indian culture had been justice and righteousness. Justice, in the Indian context, was a human expression of a wider universal principle of nature and if men were entirely true to nature, their actions would be spontaneously just. Men experienced Justice, in the sense of a distributive equity, as moral justice, social justice, and legal justice. Each of these forms of justice was viewed as a particularization of the general principle of the universe seen as a total organism. Impartial administration of justice was always regarded as one of the main duties of the king and he was considered to be the fountain of justice.

The ethical code of a society and its cultural standards were inter-related. The cultural maturity and social amicability and even their deterioration was reflected in the law and order of that society. The concept that the people got the governance they deserved was very much implied here. With this view in mind observations of Manu and Kautilya, as found in their respective works had been evaluated.

Both these scholars lived almost in the same period and they belonged to the same caste (Brahmana) and hence it is very interesting to analyse their observations, especially on law and order, and administration of justice. The relevance of their code of conduct is very much important. The exact period of Manu is not determined
yet, but certain references related to Manu could be seen even in Vedic texts and in Mahabharata. It is generally accepted that Manu lived in between second century B.C. and second century A.D.¹

On the other hand the Arthasastra was referred to respectfully by the scholars of sixth century AD.² It was assumed that the Arthasastra was composed nearly before the beginning of the Christian era, which pointed to the fact that Manusmriti and Arthasastra were composed almost in the same period and hence their observations on moral codes are relevant and thus to be analysed in detail. An analysis of the same would provide us with a clear awareness of the socio-economic conditions prevailed at that time and also its relevance.

In the early Vedic times justice was administered by the tribe and clan assemblies, and the judicial procedure was very simple.³ But with the extension of the functions of the State and the growth of the royal powers, the King came gradually to be regarded as the fountain of justice,⁴ and a more or less elaborate system of judicial administration came into existence.

The author of Arthasastra divided his book into fifteen

1. The Ordinances of Manu, (tr.) A.C.Buhler, New Delhi, Introduction, xx to xxv).
3. Prof. Macdonell says : “(In the early Vedic Age) there is no trace of an organised criminal justice vested either in the King or in the people. There still seems to have prevailed the system of wergeld (Vaira), which indicates that criminal justice seems to have remained in the hands of those who were wronged. In the Sutras, on the other hand, the King's peace is recognised as infringed, a penalty being paid to him, or according to the Brahminical text-books, to the Brahmins. It may, therefore, reasonably be conjectured that the royal power of jurisdiction steadily increased; the references in the Satapatha-Brahmana to the King as wielding punishment (Danda) confirm this supposition.” Vedic Index, I. pp. 391-392. He adds that there is very little recorded as to civil law or procedure in early Vedic literature.
4. “The King is the fountain-head of justice.” Narada, (Jolly) Legal Procedure, III.
Adhikaranas. It was seen that certain general rules were referred to at random in all Adhikaranas. But in the third, Dharmastheeya, the maintenance of law and order and the details of its implementation had been discussed in detail. In this Adhikarana the author had discussed each and every subject in separate chapters. Even though Manusmriti has twelve chapters, it could be divided into four viz. Acara, Prayascitta, Vyavahara, and Rajadharma, depending on the variety of topics. In Manusmriti references to legal procedures could be seen up to the eighth chapter, we received a clear perception only after that. In chapter eight, Manu’s expertise in giving direction regarding the maintenance of law and order was seen and he appeared as a clever advocate capable of managing the disputes of common man.

The word danda is very comprehensive in connotation. In a general sense, danda as punishment means coercion. Manu was of the opinion that the king must be in know of two things, namely, dharma and danda or chastisement; as the proper maintenance of the rules of dharma and imposing punishment on those who violate the rules of Dharma. Manu followed up his account of the obligations of the king to protect the lives and property of his people by applying the theory of Danda. Manu assigns to it the same high divine origin as to the office of kingship. The lord created Danda or punishment, before he appointed a king, in order to make the discharge of duties properly and efficiently. Danda is considered as the protector of all creatures and of law. According to him, Danda rules all people and protects them. Through the fear of danda, criminal tendencies were prevented even when public was asleep. Thus it was the danda
(punishment) that kept all classes of the society or Varnas and the ashrams within the limits of the discipline. Moreover, psychologically the fear of danda was the grand motive for the fulfilment of individual obligations. Manu applied the doctrine of universal jurisdiction of the king’s danda over his subjects. Thus Manu laid down the principle of the king’s unlimited jurisdiction over offenders irrespective of their rank or status or relationship. Manu felt that the king’s mode of application of danda was the key to the prosperity and destruction of the individual and the community.

At the head of the judicial system stood the King’s Court. This Court was held at the capital, and was presided over, sometimes by the King himself, but more often by a learned Brahmain appointed for the purpose, he was known as the Adhyaksha or Sabhapati. The Adhyaksha perhaps originally selected for each particular occasion in course of time became a permanent Officer of State, and held the position of the Chief Justice (Pradvivaka) of the realm. The King, together with the Pradvivaka and three or four other judges (dharmikah), formed the highest Court of Justice. The respective duties of the different members of the King’s Court were: The Chief Justice decided causes, the King inflicted punishments, the judges investigated the merits of the case.

There were certain modifications in the procedure of setting up of the court of trial, and Kautilya clearly stated where the courts

6. “The King should appoint as judges persons who are well versed in the Vedas and the other branches of learning, who are acquainted with the Sacred Law, and who are truthful and impartial towards friends and foes.” Yajnavalkya, II. 2-3. Cf. Brihaspati, I. 29-30, and Sukraniti, IV. 5, 14.
were to be established and who was to be authorised for conducting the trial. The king was expected to follow a detailed procedure while conducting the trial of any case. The trial of a crime must be carried out on courts of Sangrahana, Dronamukha, and Sthaniya. (dharma-sthastrastrayomatyah janapadas and his angrahanad ronamukas thaniyesu vyavaharika narthankuryuh / Janapadasandhi = 10 villages, dronamukha = 400 villages or 40 Janapadas, Sthaniya = 800 villages or 2 Dronamukha.) Here we were told that the trials must proceed step by step, which to our amazement, reminded us of the present hierarchy in legal procedure - Taluk court, District court, High court, and of Supreme court. After conducting the trials, if the dispute was not solved, the king himself, personally, had to hear the complaint and delivered the verdict and that was treated to be the last and the final. Kautilya showed differentiation with regard to the complaints to be accepted for trial.

It was found that jury system existed in Manu’s period and Manu. The number of judges varied. According to Manu, three judges, besides the Chief Justice, were enough to formed a court, but Kautilya held that the judicial assembly should consist of six persons, three Officers-of-State, and three other learned persons.

As per the directions of Manu, the king was to preside over the court where justice was meted out to the subjects. He was to be properly accompanied by the Brahmanas and ministers who were experts in counseling. Since Manu held that the judge should be a person learned in all branches of learning, hence it was important to notice that scholarship in Vedas alone was not a sufficient qualification for a judge.

Manu desired that the king himself had to attend them (the
vyavaharas) following principles drawn from local usages and from institutes of the sacred law. He appointed Brahmanas and experienced councilors to help in him in accomplishing this task. But if the king did not personally investigate the suits, he had the power to appoint a learned Brahmana for the trial of the same. Such a representative entered the court, simply dressed, accompanied by three assessors, and fully considered all evidences brought before the king. The fact should not be forgotten that where three Brahmanas well versed in the Vedas and a learned judge appointed by the king was present, that place could be called the court.

It was found that jury system existed in Manu’s period and Manu recommended the king to gave the power of judicial administration to Brahmins in his absence. It was also surprising to note the juries in the court of the Brahmin judge were also Brahmins. Manu had described such a court where three Brahmins versed in the Vedas and the learned judge appointed by the king as the court of four-faced Brahman.

The jury system, as it now prevails in the European countries, was somewhat different from what prevailed in Ancient India. The three or five members of the judicial assembly acted as jurors as well as judges, but the final decision rested with the Chief Justice. The Chief Justice decided cases with the assistance of learned Brahmins and in accordance with law.” The Adhyaksa decided cases with the assistance of three members of the judicial assembly. The Chief Justice and the puisne judges were chosen in view of their eminent character and deep learning. They were, as a rule, Brahmins, but sometimes a few of them were selected from the other
Manu had provided the qualifications of the king who could be the judicial administrator. The one who was truthful, acted after due consideration, wise, and knew the respective value of virtue, pleasure, and wealth could be the Judicial administrator. A king who properly inflicted punishment prospered with respect to those three means of happiness; but if he was cunning, partial, and deceitful he was to be destroyed, even through the unjust punishment, which he inflicted. Manu felt that the judicial administration should not rest in the hands of a feeble minded king.

If judicial administration were given to such a king he would destroy the whole country.

The King’s Court, it seemed, had two sorts of jurisdiction, namely, original and appellate. As an original court it tried all cases which arose within the boundaries of the capital. On its appellate side it was the highest Court of Appeal for all cases which were put on trial in the first instance by the inferior courts. The King’s Court also exercised a sort of general supervision over the administration of justice throughout the country. Next in importance to the King’s Court were the principal courts held in the important centres and in the larger towns forming the headquarters of districts or sub-districts. The constitution of these courts was very similar to that of

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10. ‘Sangraha,’ ‘dronamukha,’ ‘sthaniya,’ Arthasastra, Bk. II. ch. 36.
the King’s Court. Royal officers, assisted by persons learned in the law, administered justice in these courts. They were presided over by Adhyakshas appointed by the Central Government. They had original jurisdiction in respect of all cases arising within the boundaries of the towns in which they sat, and also of the more important civil and criminal cases occurring in the neighbouring villages. And it seemed that they had a sort of appellate jurisdiction over the decisions of the lower courts within the districts or sub-districts of which the towns formed the headquarters.

As a rule, the same courts tried both civil and criminal cases. The Smriti works did not draw any distinction between civil and criminal courts. But Kautilya mentioned two types of matters which came up before the judges for adjudication. One type was discussed under the section called dharmasthaya and under this section included those offences which pertained to private individuals. In such cases, the plaintiff as well as the defendant were private persons and the government was not a party to such suits. The other type was known as kantakshodna, under this category the offenders were brought for punishment for those offences which were not viewed as mere private matters of little concern to the government. In fact these were the matters with which the state was intimately connected essential for the eradication of crime in general. The distinction between the two broadly corresponded to the current division between civil and criminal offences. These latter courts were what might be called administrative courts. These courts dealt with offences which affected not so much the rights of individuals as the interests of the community, and interfered with the proper government
of the realm. They were presided over by three Officers-of-State.\footnote{11} Besides these courts, each village had its local court, which was composed of the headman and the elders of the village.\footnote{12} Such courts decided minor criminal cases, such as petty thefts, as well as civil suits of a trifling nature, like disputes relating to the boundaries of lands situated within the village.\footnote{13} There were also minor unofficial courts which were not established by a royal writ but were popular in nature, such as, the courts of clans and families; the courts of village elders; the courts of guilds, and the courts of municipalities, commercial organizations or corporations. Perhaps these courts were established to settle the disputes arisen between members of a joint family, traders, tribes, guilds etc. and decisions were to be taken by those who were conversant with the conventions made by them and their usage.

The regular courts met once or twice every day, usually in the mornings and evenings. The court-house was looked upon as a sacred place, and it was open to all. Trials were always held in public. Cases were taken up for disposal either in the order of their respective applications, or of their urgency, or of the nature of the injury suffered, or of the relative importance of the castes of suitors. The royal officers were strictly forbidden to take any part either in the commencement or in the subsequent conduct of a suit. Manu was very emphatic on this point. “neither the King,” said he, “nor any servant of his shall

\footnote{11} These officials were to be either ministers (amatyah) or directors (prade-shtarah). \textit{Arthasastra}, Bk. IV. ch. 1.
\footnote{12} \textit{Arthasastra}, Bk. IV., deals with cases which were triable by these administrative courts.
\footnote{13} \textit{Grama-vrddhah},’ \textit{Arthasastra}, Bk. III. ch. 9.
cause a lawsuit to be begun, or hush up one that has been brought before the court by some other person.” 14 It was not very clear whether this rule was confined only to civil suits, or applied to criminal cases as well. But it was probable that, in the graver criminal offences, the State took upon itself the duty of conducting the prosecution. 15

According to Manu legal suits were of eighteen types, namely,

(1) recovery of debts,
(2) deposit and pledge,
(3) sale without ownership,
(4) concerns among partners,
(5) resumption of gifts,
(6) non-payment of wages,
(7) non-performance of agreements,
(8) rescission of sale and purchase,
(9) disputes between owners of cattle and herdsmen,
(10) disputes regarding boundaries,
(11) assault,
(12) defamation,
(13) theft,
(14) robbery and violence,
(15) adultery,
(16) duties of man and wife,
(17) inheritance and partition, and

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14. Manu, VIII. 43. of Narada (Jolly), Judicial Procedure, 3.
15. In the Trial Scene in the Sudraka’s M richchakatika, however, we find that in a murder case the court commences its proceedings on the application of a private person (arthi). It is difficult to say whether this was or was not the usual practice.
It was evident that the list includes both civil and criminal cases. Although it was not found necessary to draw a line of separation between the two classes, the distinction, it appeared was fully understood.

It was set forth in Arthashastra under the following seventeen heads:

(i) Vivahasamyuktam-concerning marriage and allied topics,
(ii) Dayavibhagah-division of inheritance,
(iii) Vastukam-disputes regarding property and buildings,
(iv) Samayasyanapakarma-non-performance of agreements,
(v) Rinadanam-recovery of debts,
(vi) Aupanidhikam-concerning deposits,
(vii) Dasakarmakarakalpah-rules regarding slaves and labourers,
(viii) Sambhuyasamutthanam-co-operative undertaking,
(ix) Vikritakritanyshyah-rescission of purchase and sales,
(x) Dattasya anapakarma-resumption of gifts,
(xi) Asvamivikrayah-sale without ownership,
(xii) Svasvamisambandhah-law concerning ownership,
(xiii) Sahasam-robery (or forcible seizure of an object,
(xiv) Vakparushyam-defamation,
(xv) Dandaparushyam-assault,
(xvi) Dyutasamahvayam-gambling and betting,
(xvii) Prakirnakam-miscellaneous offences.

16. Maim, VIII. 4-7. The titles given in some of the other law books are slightly different.
Within the jurisdiction of kantakashodan law the following matters were included:

1. Protection of citizens, merchants etc.
2. Suppression of undesirable elements.
3. Detection of criminals by the help of spies.
4. Arrest of culprits and persons suspected of crime.
5. Post-mortem examination.
6. Discipline in the various state departments.
7. Punishment for mutilation.
8. Capital punishment with or without torture.
9. Ravishment of immature girls.
10. Examination by word and action thereon. Miscellaneous offences.

There did not exist special courts for the trial of criminal cases and there was no distinction between civil and criminal jurisdiction during those times.

It was pertinent to consider the judicial procedure as it prevailed in Ancient India. Justice was administered in accordance with legal rules which fell under one or other of the following four heads: (a) Sacred Law (Dharma), (b) Secular Law (Vyavahara), (c) Custom (Charitra), and (d) Royal Commands (Raja-sasana).17

“Sacred Law,” said Kautilya, “was the embodiment of truth; Secular Law depended upon evidence; Custom was decided by the opinion

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of people; and Royal Edicts constitute administrative law.”\(^\text{18}\) Opinion was also divided as to the relative importance of the different sets of legal rules. Kautilya and Narada agreed in holding that “each following one was superior to the one previously named” in the above classification; but Kautilya added, “when there was disagreement between Sacred Law and Secular Law, or between Sacred Law and Custom, the matter was to be decided according to Sacred Law. However, when there was disagreement between Sacred Law and Morality, Morality was to prevail, for it was likely that the original text (governing such a case) had been lost”\(^\text{19}\) According to Manu, “when it was impossible to act up to the precepts of Sacred Law, it became necessary to adopt a method founded on reasoning, because Custom decided everything and overruled the Sacred Law. Divine Law had a subtle nature, and was occult and difficult to understand. Therefore, the King or the judges tried causes according to the visible path.”\(^\text{20}\) Thus, in practice, customs were the most important of the four divisions of law, and Manu and almost all the other law-givers laid it down as the essential principle in the administration of justice that disputes should be decided according to the customs of countries and districts (janapada), of castes (jati), of guilds (sreni), and of families (kula).

\(^{18}\) Ibid., A similar passage occurs in Narada (Legal Procedure, 10-11); but instead of ‘caritram samgrahe pumsam,’ we find there the words ‘caritram pustakarane.’ Prof. Jolly’s translation of this passage does not appear to us to be correct.

\(^{19}\) Ibid., Yajnavalkya, comparing Dharmasastra and Arthasastra, remarks that the former is the more authoritative of the two.

\(^{20}\) Manu, VIII.43. of Narada (Jolly), Judicial Procedure, 3.
The judicial proceedings in a case consisted of four stages, namely, (1) the statement of the plaintiff (purva-paksha), (2) the reply of the defendant (uttara- paksha), (3) the actual trial, consisting of the evidence to establish the case and the arguments on both sides (kriya), and (4) the decision (nirnaya).

All civil actions as well as criminal cases were commenced by written petitions or verbal complaints made before the Court by the aggrieved party. The date and the place of occurrence, the nature of the wrong done or of the claim made, and the names of the plaintiff (arthi) and the defendant (pratyarthi) were entered in the books of the court. An important point for the court to determine at this stage was the capacity of the parties. If one of the parties was incapable of suing or defending, the suit could not be proceeded with.

The first important step in the trial was the statement of the case by the plaintiff. He had to cause the plaint to be put in writing, either by the officer of the court or by his legal adviser. A great deal of care, it seemed, had to be taken in the preparation of the plaint, for Narada mentioned the following as the defects of a plaint, namely, “(1) if it related to a different subject, (2) if it was unmeaning, (3) if the amount claimed had not been properly stated, (4) if it was wanting in

21. Arthasastra, Bk. IV. ch. 1. Yajnavalkya says that the representation, as made by the plaintiff, is to be put in writing in the presence of the defendant the year, month, fortnight, and day, together with the names, caste, etc., being given.
22. “The accusation,” says Narada, “is called the plaint; the answer is called the declaration of the defendant.” Legal Procedure, 28. There were, according to Narada, two modes of plaint, “because a plaint may be either founded on suspicion or a fact.” Ibid. 27.
propriety, (5) if the writing was deficient, or (6) redundant, (7) if it had been damaged.”

A small verbal error, however, did not vitiate the plaint. On the other hand, a plaint, though otherwise faultless, was held as incorrect if it was contrary to established law and usage.

The next step was the issue of summons for the attendance of the defendant. It was the duty of the defendant to attend the court on receipt of the summons; and if he attempted to abscond, the plaintiff might arrest him, to secure his presence in court. Such arrest might be one or other of four kinds, namely, local arrest, temporary arrest, inhibition from traveling, and arrest relating to his work.

The defendant, after having become acquainted with the exact statement of the plaint, had to give a written reply. A reply might be one or other of four sorts, namely, a denial (mithya), a confession (samprati-patti), a special plea (pratyavaskandana), a plea of former judgment (prannyaya).

Before the answer to the plaint was tendered, the plaintiff was at liberty to amend his plaint in any way he liked, but after the delivery of the reply, no amendment was permitted. The plaintiff was entitled to submit a rejoinder to the defendant’s reply.

24. Ibid. II. 25.
25. Ibid. II. 15.
26. Narada, Legal Procedure, 47. The following classes of persons, according to Narada, might not be arrested, namely, “one about to marry; one tormented by illness; one about to offer a sacrifice; one afflicted by a calamity; one accused by another; one employed in the King’s service; cowherds engaged in tending cattle; cultivators in the act of cultivation; artisans while engaged in their own occupations; a minor; a messenger; one about to give alms; one fulfilling a vow; one harassed by difficulties.”
27. The reply, according to Narada, was to correspond with the tenor of the plaint. Legal Procedure, II. 2.
29. Ibid. II. 7.
If the case was a simple one, it was decided then and there. But if it was one which involved any important questions of fact or of law, and was not a matter of any urgency, the parties were given time to prepare their respective sides of the case.  

Where the defendant denied the charge or claim, it was on the plaintiff to prove his accusation or demand. Under certain circumstances, however, the burden of proof might be shifted from the plaintiff to the defendant.

Coming to the topic of marriage, Kautilya could be seen discussing, the duty of marriage, the property of woman and compensation for remarriage. In this women and men were analysed. Moreover, the division of property and the right to property were looked into. Details regarding the right to inherit property by women with sons or women having only daughters, and childless women were given in detail. He went on explaining the duty of a wife, maintenance of a woman, which also dealt with topics like cruelty to women, enmity between husband and wife, a wife's transgression, her kindness to another, and also about forbidden transactions. A husband could punish his wife by beating her three times with a bamboo bark or with a rope or with his palm and that too should be given on her hips. He would be punished if he exceeded this limit.

30. Gautama says: “If the defendant is unable to answer the plaint at once, the judge may wait for a year. But in an action covering kine, draught oxen, women, or the procreation of offspring the defendant shall answer immediately; likewise in a case that will suffer by delay.” XIII. 28-30. Narada also advises the King to give time to the defendant except in urgent affairs, heinous offences, etc.I. 44-45.

31. For instance, “when the defendant has evaded the plaint by means of a special plea, it becomes incumbent on him to prove his assertion, and he is placed in the position of a claimant.” Narada, Judicial Procedure, II.31.
Vagrancy, employment, short and long periods of separation (hrasvaprapasa and dirghaprapasa), remarriage of women, division of inheritance, time for partition, special shares in inheritance, distinction between sons, etc., construction and maintenance of buildings, sale of buildings, boundary disputes, determination of boundaries, miscellaneous hindrances (vaisamyas), destruction of pasture lands, fields and roads, breach of agreements, and recovery of debts (regarding many debts against one, witnesses, taking oaths etc.), were also mentioned in detail. The topics related to deposits (pledges, property entrusted to another for delivery to a third person, borrowed or hired properties, retail sale, sealed deposits etc.), rules regarding slaves and labourers, rules regarding labourer and cooperative undertaking (especially in sacrificial acts), rescission of purchase and sale without ownership, the actual ownership, robbery, defamation, intimidation, assault (striking, hurting, robbery in quarrels), gambling and betting and miscellaneous offences and their punishments also found a significant place in his work. In the fourth book, protection against artisans, merchants, remedies against national calamities, suppression of the wicked living by foul means, detection of youths with criminal tendency by ascetic spies, examination of sudden deaths were critically explained. (Here the need for post mortem of a body as a means to detect whether it was a case of murder or suicide was mentioned). The trial and torture to client confession, the protection of all kinds of Government departments, fines in lieu of mutilation of limbs, death with or without torture, sexual intercourse with immature girls and punishments for violation of justice were analysed in fourth section while the first
part of the fifth dealt with details of punishments.

Determination of legal disputes was the first concern of Kautilya, the validity of which was discussed in detail. The court of justice was to uphold the sacred law or dharma as dharma was eternal truth holding its sway over the world. Once more Kautilya underlines the importance of fair trial. He said that the king who administered justice in accordance with sacred law (dharma), evidence (vyavahara), and ethics (nyaya), would be able to conquer the whole world bounded by the four quartets (caturantam mahim).

The eligibility of witnesses was an important question. Householders, men with male issue, and natives of the country belonging to any of the four castes were regarded as eligible witnesses.\(^{32}\) Persons who had an interest in the suit, familiar friends and companions, enemies of the parties, persons formerly convicted of perjury, persons suffering from some severe illness, and those tainted by mortal sin, were ineligible as witnesses.\(^{33}\) And no person belonging to any of the following classes could be called as a witness, except under special circumstances: the King, mechanics, and actors, a student of the Veda, an ascetic, one wholly dependent, a person of ill repute, a dasyu, a person who followed forbidden occupations, an aged man, an infant, a man of the lowest castes, one extremely grieved or intoxicated, one oppressed by hunger, thirst, or fatigue, a mad

\(^{32}\) Manu, VIII. 62. Cf. Narada (I. 177-190), who gives a longer list.

\(^{33}\) According to Vishnu, the proper witnesses are those born of a high family, possessing good qualifications or wealth, devoted to religious practices and sacrifices, those who have sons, who are versed in the law, who are truthful, who are devoted to study. Ch. 8 (Jolly’s Sanskrit text).
man, one tormented by desire, a wrathful man, and a thief. The reasons why such persons were excluded from the witness box could be: a child would speak falsely from ignorance, a woman from want of veracity, an impostor from habitual depravity, a relative from affection, and an enemy from desire of revenge. The ground on which some of the other classes were excluded appears to had been the desire on the part of the State to prevent, as far as possible, any interference with the ordinary vocations of the people. On failure of competent witnesses, however, the evidence of an infant, an aged person, a woman, a student, a relative, or a servant, might be offered.

Uncorroborated evidence of a single witness was regarded as insufficient for the decision of a case, unless the witness happened to be a person possessed of exceptional qualifications and was agreeable to both the parties. Before the deposition of a witness was taken, it was the duty of the judge to impress on the witness the necessity of telling the truth, and the consequences, legal and moral, of telling a falsehood. Witnesses were also charged on oath to speak the truth. According to Gautama, in the case of persons other than Brahmanas the oath was to be taken in the presence of the gods, of the King, or of the Brahmanas. Perjury was regarded as a dire sin as well as a serious offence, and a witness who perjured himself was liable to be fined from one hundred to one thousand panas, the exact amount of the fine depending upon the motive which induced

34. Manu, VIII. 65-68.
35. 1. 191.
37. Ibid.
38. Manu, VIII, 77; Vishnu, VIII.9
him to give false evidence.\textsuperscript{39} Perjury was crime according to \textit{Manusmriti}. If justice was destroyed by injustice, or truth by falsehood, and if the judges were mere spectators, then they will be considered as offenders.\textsuperscript{40} Documentary evidence (lekhya) was frequently resorted to in ancient India, specially in civil actions.

For the purpose of drawing conclusions from the evidence offered in court, it was the duty of the judge to weigh such evidence, and not merely to count the number of witnesses and documents on each side.\textsuperscript{41} “There were some who gave false evidence from covetousness, there were other villainous wretches who resorted to forging documentary evidence. Therefore, both sorts of evidence was to be tested by the King with great care: documents according to the rules regarding writings, witnesses according to the law of witnesses.”\textsuperscript{42} The means of arriving at the truth were regarded as four-fold, namely, (1) visible indications (pratyaksha), reasoning (yukti), inference (anumana), and analogy (upamana).\textsuperscript{43} If the witnesses disagreed with one another as to time, age, matter, quantity, shape, and species, such testimony was to be held as worthless. The judges were advised to note the demeanour of a witness in court, and to draw an inference as to his veracity therefrom.\textsuperscript{44}

\begin{itemize}
\item \textsuperscript{39} Manu, VIII. 71.
\item \textsuperscript{40} Supranote 8.
\item \textsuperscript{41} \textit{Ibid.}, VIII. 72.
\item \textsuperscript{42} Maim says that the judge should exhort the witnesses as follows: “A witness who speaks the truth in his evidence gains after death the most excellent regions of bliss and here unsurpassable fame.” Such testimony is revered by Brahma himself. Manu, VIII. 81-86.
\item \textsuperscript{43} Gautma, XIII. 12-13.
\item \textsuperscript{44} Manu, VIII. 120-121.
\end{itemize}
But if a man being questioned did not uphold a statement duly made by himself at a former stage of the trial; or if he ended by admitting what had been previously negatived by himself; or if he was unable to produce any witnesses after having declared that they were in existence, and having been asked to produce them; by all such signs as these, persons devoid of virtue might be known.

If the plaintiff failed to produce witnesses, or did not appear within three fortnights, he was non-suited. And if it was proved that the plaintiff had no just cause for bringing the suit, he was ordered to pay a fine. Counter-charge, was not, as a rule, permitted. One accused, of an offence was not to lodge a plaint himself, unless he had refuted the charge raised by the other party. But in certain classes of civil actions, such as disputes between members of a trade guild or between merchants, or in quarrels leading to duels, countersuits were allowed. When two persons brought suits against each other, he was admitted as plaintiff whose grievance was the greater, or whose affair was the more important of the two, and not the person who was the first to go to law. A person who had already been accused by another person could not be accused by a different party of the same offence, “for it was wrong to strike once again who had been struck by another.” In cases relating to property, possession was regarded as some evidence of ownership.

45. Narada, Legal Procedure, 55.
46. Arthasastra, Bk. III. ch. 1.
47. Quotations from Narada (Jolly), I. 8.
49. Arthasastra BK IV.
Facts in a case were proved by evidence. In six cases, witnesses were held unnecessary, and indications of the crime committed were regarded as sufficient. “It should be known,” says Narada, “that one carrying a firebrand in his hand is an incendiary; that one taken with a weapon in his hand is a murderer; and that where a man and the wife of another man seize one another by the hair, the man must be an adulterer. One who goes about with a hatchet in his land and makes his approach may be recognised as a destroyer of bridges and embankments; one carrying an axe is a destroyer of trees. One whose looks are suspicious is likely to have committed an assault. In all these cases, witnesses may be dispensed with; in the case of assault, careful investigation is required.”

Manu has classified the evidence in three categories: (i) written evidence, (ii) oral evidence, and (iii) the divine evidence. The king should himself investigate the law suits brought before him or get them investigated by learned Brahmins.

Although all the forms of evidence were equally admissible, the oral evidence witnesses was the commonest mode of proving a fact. Direct evidence was generally regarded as superior to circumstantial evidence, but in certain cases, e.g. theft and housebreaking, the latter was often the only kind of evidence available, and was held sufficient. It seems that hearsay evidence was not always excluded.

50. Narada, I. 175.
51. Arthasastra BK IV.
52. Arthasastra, Bk. III. ch. 8.
53. Manu says: “Evidence in accordance with what has actually been seen or heard is admissible.” VIII. 74.
Manu established the need for observation and discretion in following the causes for disputes. The external evidences like the changes in tone of the concerned parties and expressions on their faces etc. were given due consideration. *Manusmriti* had specified on the part of the judge to discover the internal disposition of men by probing the heart of the accused and the witness by studying their postures, gait, the gestures, the speech, and the changes in the eye and of face.\(^{54}\) Manu advocated the use of judicial psychology when the King examined the evidence of infants, aged and diseased men, who are apt to speak untruly, as untrustworthy, likewise that of men with disordered minds. Hence, it could be asserted that *Manusmriti* was the first code of Law to take account of judicial psychology. But the author of Arthasastra advised to depend upon separate symptoms and evidences for each and every crime. Thus, if one expired before settling a dispute or having a dangerous situation for the person, the witness must try to obtain the compensation to the plaintiff.

**Punishment**

The state performed its duty of protection of society and the individual through coercive enforcement of the standards of justice, which were reduced for the purpose into the proceedings of positive law.\(^{55}\) Accordingly, the traditional Indian king had been invested with danda, “the sceptre”, a symbol of the power and authority of the

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state, which ruled, inexorably by law and punishment. The exercise of the coercive power of danda with regard to law-enforcement was considered just in the highest sense, since particularistic legal codes were considered to be concrete and detailed embodiments of the more abstract and exalted principles of justice which were fundamental to the cosmos.

The administration of legal justice and infliction of punishment was performed on the basis of Varna system. Manusmriti considered that it was only natural to take Varna into account in the administration of legal justice.

Manu strongly believed that the “danda” “the scepter”, a symbol of the power and authority was created by God and only fear alone would make the human beings to swerve not from their duties. Manu sturdily had advocated the theory of deterrence as the purpose of punishment and the infliction of punishment was to be according to the principles of natural justice. The king having fully considered the time and the place of the offence, the strength and the knowledge of the offender would justly inflict punishment on the offenders. The concept of the consideration of the offence and offender for the purpose of punishment fell in line with the modern principles of justice evolved by Jeremy Bentham and Ceseare Beccaria. Manu felt that only punishment could control all the human beings on the

earth and gave utmost importance to punishment. However, he was cautious of punishment given without proper judgment and felt that it might destroy the country.

Manu cautioned the king that if he did not punish the offenders who were worthy of punishment, then, the stronger would roast the weaker, like fish on a spit and a situation would arise, where, might may overrule the right. In a country where punishment was not properly inflicted, the ownership would not remain with any one; the lower ones would usurp the place of the higher ones. The whole world was kept in order only by punishment, because there was no one in the world who would always act in a just manner. Only the fear of punishment ran the world.

There were so many suggestions as to how the king must take a stand on certain cases. The king must punish the guilty. Manu clearly said that “where he who was worthy of condemnation is condemned, the king was free from guilt, and the judges were saved from sin; the guilt fell on the perpetrator of the crime alone.” Thus the judge “knowing what was expedient or inexpedient, what was pure justice or injustice, let him examine the causes of suitors according to the order of the castes (varnas).” Thus the king himself had certain responsibilities to his subjects, especially to the weaker sections of the society. The king was to protect the inherited and other properties of a minor until the completion of his education or until he had attained his maturity. Thus care must be taken of

59. Supranote 8.
60. Manusmriti, VIII. 19.
61. Ibid., VIII. 24.
barren women, of those who have no sons, of those whose family was extinct, of wives and widows faithful to their lords, and of women afflicted with diseases.\textsuperscript{62}

Kautilya clearly stated where the courts were to be established and who would be authorised for conducting the trial. In the cities of Sangrahana, Dronamukha, and Sthaniya and at places where districts meet, three members acquainted with sacred Law (\textit{Dharmasthas}) and three ministers of the king (\textit{Amatyas}) were to carry on the administration of justice.

The author of \textit{Manusmriti} gave directions very briefly on crimes and disputes. In the case of marriage, his directions were thus if, after one damsel has been shown, another be given to the bridegroom, he might marry them both for the same price (\textit{kanyasulka}) that Manu ordained. He who gave a damsel in marriage, having first openly declared her blemishes, whether she be insane, or afflicted with leprosy or had lost her virginity, was not liable to punishment.\textsuperscript{63}

According to Manu frankness in the matter regarding marriage was considered as most vital. Turning to Kautilya, it was found that, matrimony and its associated problems were given first priority while discussing the nature of disputes in the second chapter of, the third section of the work. The means of subsistence (\textit{vrtti}) of a woman and the right to property by a woman were also discussed in detail. Means of subsistence valued at above two thousand shall be endowed in her name. There was no limit to jewellery. The woman could spend

\textsuperscript{62} \textit{Ibid.}, VIII. 27, 28.
\textsuperscript{63} \textit{Ibid.}, VIII. 204-205.
such wealth in bringing up her son, her daughter in law, or herself, if her absent husband had made no provision for her maintenance. At the same time the husband might make use of this property in calamities, diseases, and famine, in warding off dangers, and in charitable acts only. There must not be any complaint from both of them with regard to such property. It is surprising to note that eight types of marriages were accepted by both Manu and Kautilya (brahma, daiva, arsha, prajapatya, asura, gandharva, rakshasa, and paisaca). But according to Manu, the first six as per the order were lawful for a Brahmana, the four last for a Ksatriya, and the same except the raksasa, for a Vaisya and a Sudra.\(^64\) But of these, three of the five last were declared to be lawful and two were unlawful. The paisaca and asura were never to be followed, according to Kautilya. Accordingly, the first four were ancestral customs and were valid on their being approved of by the father (of the bride). The rest were to be approved subject to the distribution of kanyasulka. Kautilya pointed out that the trial must be fair and without prejudice. The farmer and servants of king were not to be taken into custody during working hours. This dictum was very much to be followed in the case of recovery of debts. The wife was not to be held responsible for the debts of husband if she is unable to repay the loan of her husband. But on the other hand, the husband had to repay the debts of his wife. In those cases where witnesses proved themselves to be stupid or senseless, and where the investigation of the place, time or nature of the transaction was of no avail, the three amarcements were levied.\(^65\)

\(^{64}\) Ibid., III. 23.

\(^{65}\) Ibid., VIII.36. But he who falsely said so was to be fined in one/eighth of his property.
In the case of accepting deposits, their maintenance, refunds, Manu and Kautilya were almost on the same stand. As far as possible, the Sudra might not be accepted as witness. If they were taken as witnesses, they must be tried in a special order.

While speaking on the eligibility of witnesses, Manu was sceptical about women and persons of lower varna. Therefore, he insisted that women should give evidence for women, for brahmanas the brahmanas, for sudras the sudras, and men of the lowest castes for the lowest. A note on dying declaration was also found Manu has given exception in cases where a crime occurred inside a house, a forest, or a person dying of homicide and then, whoever was near the victim can be the witness. When suitable witness was not available then evidence could be given by a woman, by an infant, by an aged man, a relative a pupil, a slave or by a hired servant. Manu considered their quality and integrity more important than the actual number of witnesses. But Kautilya did not show any discrimination with regard to witnesses. A sixteen year old boy or a girl of twelve years was fit to be a witness.

The women were to be taught manners by a man by the usage of abusive words like “nagne, vinagne, apitrke”, and a man could go to the extent of beating her thrice for this purpose. Violation of the above rule, called for half of the punishments levied for defamation and criminal hurt.

A man who violated an unwilling maiden had instantly suffer corporal punishment, but a man who enjoyed a willing maiden was
not be punished, if his caste be the same as hers. But Kautilya did not take a stringent stand on this. If the woman died in this attempt, then the corporal punishment was to be given, where as, cutting of hands or a fine of four hundred panas was prescribed as sentence for the crime. Both Manu and Kautilya discussed its various consequences. It was seen that the author of Manusmriti was stricter than that of the author of Arthasastra.

In short, the point of view of Manu was more philosophical than that of Kautilya. Moreover the rules and dictums of Manu were based on the interests of varnasramadharma, but the author of Arthasastra analyses each and every corner of these disputes and stresses more on the practical aspects of the vyavaharas.

Even though Manu gave directions on the nature of punishments, he paid more attention to the discriminative authority of the king. Compared to that, Kautilya analysed every minutest aspects of the vyavaharas and prescribed punishments for each and every one of such crimes.

Thus it could be seen that though it is not very easy to accept these views of Manu or Kautilya - now a days, these could be considered as examples with due importance as they were composed at a time when science and technology were not developed so much and when the caste and creed superiority (vamasramavyavastha) were at its maximum. They were sincere to their commitments and worked with a view to improve the socio-economic condition of the people of the age and hence their works are unique. Perhaps, the most striking aspect of these two works under study is the fact that

66. Ibid., VIII. 362.
these observations were made many centuries ago. And as such, it gives a clear insight into the social atmosphere of that age. We could see that the social hierarchy and prevalent discriminations played a very important role then. The law and order system was based on that social setup, and hence these codes - the code of Manu and the code of Kautilya - are to be evaluated from this viewpoint which makes the study quite relevant.

It seemed that powers were limited to the transfer of the possession of property and the inflicting of small fines. Decisions in courts were given in accordance with the opinion of the majority of honest judges. The idea of a system of local courts for the disposal of cases seemed to have been firmly rooted in the minds of the people. Thus, they were the best judges of the merits of a case who lived in the place where the accused person resided, and where the subject-matter of the dispute had arisen. The work of the regular courts was greatly lightened by arbitrators. All cases, except those concerning violent crimes, could be decided by arbitration by guilds of artisans, assemblies of co-habitants, meetings of religious sects, and by other bodies duly authorised by the King. This system had the great merit of giving substantial justice to the disputants and, at the same time, preventing ruinous litigation.

The relations subsisting between the different kinds of courts were thus described by Brihaspati: When a cause had not been duly investigated by meetings of kindred, it was to be decided after due deliberation by companies of artisans; when it had not been duly examined by companies of artisans, it was to be decided by

68. Brihaspati, I. 28. Vide also Sukraniti, Ch. IV. sec. 5.
assemblies of co-habitants; and when it has not been sufficiently) made out by such assemblies it should be tried by appointed judges. 69 Moreover, Judges were superior in authority to meetings of kindred and the rest; the chief judge was placed above them; and the King was superior to all, because he passed just sentences. These passages left no doubt in our minds that there was a regular mode of appeal from the decisions of the inferior courts to the superior courts. How far this right of appeal was recognised in practice, and to what extent the people actually availed themselves of the right were questions which our present knowledge of the history of Ancient India did not enable us to answer with any degree of satisfaction.

Proper safeguards were provided against the miscarriage of justice through belief in false evidence. And whenever it was found that the decision in a case was based upon false or insufficient evidence, the judgment was reversed, and all the proceedings in the case were declared null and void. 70 The other modes of arriving at the truth, besides and so forth, as well as the gist of the trial, should be noted completely in the document recording the success of the claimant or defendant.

Kautilya believed that for the prosperity of a state, the state must be devoid of internal conflict and the King should be in control of the state. To maintain this internal peace he believed in a just and realistic rule of law. His definition of a state was one which had power and wealth and hence he put property rights and protection of wealth

69. Brihaspati adds: “(Meetings of) kindred, companies (of artisans), assemblies (of co-habitants), and chief judges are declared to be resorts for the passing of a sentence, to whom he whose cause has been previously tried may appeal in succession.” I. 29.
70. Arthasastra, BK. III. Ch.I; Manu, VIII. 117.
as one of the important themes in his jurisprudence. In fact he advocated that one could get rid of corporal punishment by paying off fines.

Kautilya also attaches great importance to human rights on how the invaded ruler and his ministers should be treated. He showed a deep understanding of criminal justice and war justice. Surprisingly, for a harsh and realist man like Kautilya he showed mercy towards the people defeated in a war and recommends humanity and justice towards them. He thought that it important to preserve the mandala structure of war and peace. He advocated that defeated king shall be treated with respect and he should be made an ally. He thought that the key people advising the defeated king should be eliminated through a silent war. Kautilya believed that law should be in the hands of the King and punishments need to be awarded to those who were guilty so that King could protect himself from the social unrest and unhappiness. He believed that punishment was a means to an end and it needed to prevent the commission of the crime. His devotion to social structure was so strong that he opined that Brahmins need to be punished less than other varnas. This unequal social justice was in itself injustice but so was his belief. He attached great importance to *dandaniti* which included, protecting property, acquiring property, augmenting them and distributing them. He felt that justice was an important constituent of sovereignty and it needed to be preserved by the State and the ultimate responsibility lied with the King.

Kautilya’s view on crime and justice was very elaborate and went on to differentiate between various crimes. He advocated different punishments depending if they were crimes committed while
in public office, civil crimes, sexual crimes, religious crimes etc. This showed that he had great grasp to customize the rule of law depending both on the offence and the structure of the society. He believed that the structure and peace was preserved in a society by effective jurisprudence. In today’s context some of his ideas might be irrelevant but it showed that the ancient Hindu jurisprudence was codified and actually more resembled the common law.

Kautiliya’s understanding of justice, war, diplomacy and human rights made him unique in his times. In ancient India there was no one comparable who could have stood the test for justice being a tool for statescraft. Kautiliya believed that while it was as much important for the state to wage a war and conquer, it was also important to maintain law and order within the state in order to make it more powerful.

Kautilaya has given a detailed and full account of the law which was an improvement over his predecessors. The distinction between civil law (Dharmasthiya) and penal law (Kantakashodhana) was first made by Kautilaya was one of his important contributions to the theory and practice of law. To ensure fair justice and impartiality of the judges, Kautilaya introduced a very bold and illuminating principle by laying down punishment for them if they failed in discharging their duty.

There were popular courts besides the royal courts. The laws administered by the courts were those laid down in the smritis and dharmasastras. Both Manu and Kautilya prescribed high qualities to be possessed by a judge.