CHAPTER – V

Concluding Observation
CONCLUDING OBSERVATION

In the following passages a humble attempt will be made in summing up the observation already made in respect of crime and punishment as gathered from ancient Indian lawgivers with special reference to Kautilya.

It has been observed that different types of crime prevailed in ancient Indian societies at different ages. It is noted from different available sources that the ancient Indian lawgivers had a clear-cut idea not only about the activities to be identified as crime but also the punishment to those. The references of different types of crime and punishment have been observed in ancient Indian scriptures, viz., the Vedic Texts, Sañhitās, Smṛtis, Dharmasāstras, Dharmasūtras, Purāṇas, Epic poems etc.

From the reference of various types of crime and punishment found in the Vedic Texts, we can get a clear idea about the Vedic society. Some of the crimes, observed in the Vedic texts are theft, homicide etc. For these crimes, punishments also have been observed here which are prescribed by the Vedic lawgivers. Among these crimes, theft, drinking liquor and treachery have been regarded as serious crimes by the Vedic
lawgivers. Here, physical punishment with red hot iron has been prescribed for the thieves. The punishment through burning on the spot also observed in the Vedic Texts. Death penalty has been prescribed by the Vedic lawgivers for drinking liquor and treachery. It has been observed that the Vedic people considered homicide as a condemnable offence. Slaying of a Brahmin has been considered as a great crime and for which different types of expiation as punishment have been prescribed by the Vedic lawgivers. Here, it has been observed that crimes related to the women like adultery, rape of women etc., were very common in the Vedic age and for these crimes some expiation were prescribed by the Vedic lawgivers. For assault, different fines and gifts such as cows, bulls etc. have been prescribed in the Vedic Texts. Here, it has been observed that the punishment for the same crime varies from caste to caste.

The reference of various types of crime and punishment also have been found in the Purāṇas. Some of the crimes are adultery, theft, violence, violation of agreement, magical rites, slaying of a Brahmin, drinking liquor etc. Among these criminal activities, adultery, slaying of a Brahmin and theft of gold have been considered as the most serious crimes. For adultery, the Purāṇas have prescribed death penalty by cutting off the sexual organ. For this crime, the Purāṇas have prescribed some expiation for the Brahmins. Here, it has been observed that for adultery,
the Purāṇas have prescribed death penalty for the willing women also which reflects that the purānic people had very strict attitude not only towards the adulterers but also towards the adulteress. Sexual intercourse with a teacher’s wife has been considered as great crime by the Purāṇas and for this crime cutting off of sexual organ along with the testicles have been prescribed and here it is also added that the offender should walk on the road till his last breath. For slaying of a Brahmin, a kind of expiation as punishment has been prescribed here. For theft of gold, here, it has been prescribed that the culprit should go to the king and should admit his guilt and lastly the king should kill him by an iron rod.

The reference of different types of crime and punishment also have been found in the Dharmasāstras, Dharmasūtras, Sāhhitās and Smṛtis. Some of the crime are theft, homicide, adultery, defamation, assault, crimes related to boundary marks, roads, fields etc., defiling water tank, garden etc., violation of convention, crimes related to the owners of cow and herdsmen, non-performance of service and non-payment of wage, crimes related to witnesses, weights and measures etc. Here, it has been observed that during Sūtra period, the legal steps begun to be adopted against homicide. But it appears to be totally based on the caste system. Here, for theft, different types of fine, mutilation of limbs as the means of punishment have been observed. Death penalty has been prescribed for
the pick pockets for repeating the same crime for the fourth time. For homicide, particularly for slaying a Brahmin, the capital punishment or confiscation of property has been prescribed. Banishment has been prescribed here for a Brahmin for killing another person. For killing the people of other castes, the prescription of different types of gift such as cows, bulls etc. have been observed here. For adultery, the prescription of capital punishment, different types of fine, mutilation of limbs, expiation etc., have been observed here. For defamation and assault, the prescription of different types of fine, mutilation of limbs etc. have been observed here. Here, it is observed that punishment for defamation and assault varies from caste to caste. For the crimes relating to boundary marks, roads, for defiling water tanks etc., the prescription of different types of fine have been observed here. For the violation of convention, the prescription of banishment and forfeiture of all property have been observed here. For the crimes relating to purchase and sale, different types of fine have been prescribed here. For the crimes relating to the owners of cows and herdsmen, for non-rendition of service and non-payment of wage, the prescription of different types of fine have been observed here. For the crimes relating to witnesses, different types of fine, corporal punishment and banishment have been prescribed here. For the crimes relating to weights and measures, the prescription of different types of fine have been observed here.
The reference of different types of crime and punishment also have been found in the epic literature. Some of the crimes observed in the epic literature are theft, trying to kill a king, setting fire in another’s house, slaying of a Brahmin, drinking spirituous liquor, committing sexual intercourse with women, providing punishment to an innocent man, practicing penance by a Śūdra etc. Here, banishment has been prescribed for those Brahmins, who, after getting monetary help from the king, commit theft. Here, death penalty has been prescribed for that person who tries to kill a king or who sets fire to others house or who steals others property. Here, it has been prescribed that for slaying a Brahmin, one should become the target of an archer in a battle or should thrice through himself in to the blazing fire. For drinking spirituous liquor, drinking of exceedingly hot liquor as punishment has been prescribed here. For drinking such liquor, the sacrifice called Brhaspatisava has been prescribed here for a Brahmin. For committing sexual intercourse with a preceptor’s wife, here it has been prescribed that one should embrace a heated metal statue of a woman. Here, it has been prescribed that the king, who punishes an innocent man, should past for one night and for committing the same crime, a Brahmin should fast for three nights. Here, banishment has been prescribed for a Brahmin for killing another Brahmin, for violating teacher’s bed, for killing fetus and for treachery towards the king.
Kauṭilya’s great concern about crime and punishment has been revealed in his concept of various types of crime and also punishment provided for the same. The discussion, in this regard, has been made in detail in the second chapter of the present thesis. A few types of crime, dealt with great care by Kauṭilya, are – homicide, rape, sexual intercourse with women, theft, robbery, invalid transaction, cruelty, forbidden transaction, sale without ownership, verbal and physical injury, encroachment and damage, crimes relating to slavery and labourers, non-payment of wage, crimes relating to purchase and sale, gambling and betting, extortion, bribery, purchasing, selling and preparing poison, wrongful confinement, making counterfeit documents and seals, helping a prisoner to escape from the prison house, entering into a fort, mountaining royal carriage, ordering what is treasonable, kidnapping, selling human flesh, causing abortion, helping murderers and thieves, causing rebellion, poisoning, setting fire to house, pasture lands, fields etc., killing and causing harm to animals, birds etc., and cutting of trees, spreading evil news about the king, selling articles from corpse, abduction, consuming or causing another to consume the prohibited food and drink, house trespass, carnally approaching the sister of one’s mother or father etc., carnally approaching lower animals, images of Gods etc., punishing an innocent man by a king, crimes relating to passport, crimes relating to
courtesans, crimes relating to artisans and other employees of different governmental departments etc.

In the prescription of Kautilya, it has been observed that he has not only dealt with crime and punishment relating to human beings but also relating to non-human beings. He has prescribed punishment for killing and causing hurt to animals, birds, fish etc., and for cutting trees. He has prescribed punishment for destroying water work also. He has not only prescribed punishment for the common people, but also for the king’s for committing crimes. It has been observed that he has not only prescribed punishment for men but also for women for committing crimes. He has not only prescribed punishment for the criminals but also for those who help the criminals. Kautilya has prescribed that after taking into account the person, the crime, the motive, seriousness or lightness of the crime, the consequences, the place, the time etc. punishment should be given. Kautilya has prescribed that the rate of fine should vary in accordance with the rank of person concerned and the gravity of crimes. Persons like the head of a religious order, an ascetic, a sick person, one exhausted by hunger, thirst or journey, a foreigner, one groaning under a fine and an indigent person should be shown mercy. He has prescribed that men should be honoured on account of excellence in learning, intellect, valour, noble birth and deeds. He has prescribed that the judges should look into
affairs, without resorting to deceit, being impartial to all brings, worthy of trust and beloved of the people.

Various types of crime and punishment have been dealt with care by the Arthaśāstra and Dharmāśāstra authorities also. Some of these criminal activities are theft, homicide, rape and sexual intercourse of woman, defamation, assault, killing and causing hurt to animals, birds, fishes and cutting of trees etc.

After a close study of both the Kautilya concept of ‘Crime’ and ‘Punishment’ and the concept dealt with by the ancient Arthaśāstra and Dharmaśāstra authorities, it has been observed that Kautilya has covered a larger area relating to crime and punishment in comparison with the ancient Arthaśāstra and Dharmaśāstra authorities. Here, Kautilya, in some cases, appears to be moderate than the Dharmaśāstra and Arthaśāstra authorities in providing punishment. Elaborate discussion, in this regard has been made in the third chapter of the present thesis. Kautilya has prescribed different fines in lieu of mutilation of limbs, which perhaps has not been prescribed by the Dharmaśāstra and Arthaśāstra authorities.

A close study of both the Kautilya concept of ‘Crime’ and ‘Punishment’ and the modern concept of the same reveals the relevance of Kautilya in the contemporary world in respect of crime and punishment which is discussed in detail in the fourth chapter of the
present thesis. Some of the crimes, having modern relevance carefully
dealt with in the *Kautiliya Arthasastra* are homicide, rape and sexual
intercourse of woman, kidnapping, mischief, killing or showing cruelty to
animals, birds, etc., cutting of trees, forgery, causing rebellion, theft,
robbery, adulteration of food, drink etc., carnal intercourse, crimes
relating to abortion, defamation, assault, intimidation, extortion, bribery,
giving false evidence, counterfeiting of coin, delivery of counterfeit coin,
possessing counterfeit coin, crime relating to weights and measures,
buying, selling and dealing in slaves, house trespass, house-breaking,
forgery, forgery relating to passport etc.

Here, it is to be noted that Kauṭilya has not only dealt with the
crimes related to human being, but he has also laid equal importance to
the crimes related to animals, birds, trees etc. Here, Kauṭilya’s
environmental awareness has been well revealed. Here, it is to be
mentioned that when the scientists of twenty first century are
appealing to the society for the protection of animal kingdom as well as
nature, Kauṭilya felt it in those days and provided strict punishment not
only for destroying nature, cutting of trees, killing of animals, but also for
misbehaviour shown to animals and birds.

With regard to the mode and severity of punishment, Kauṭilya’s
approach in some cases appears to be different from the prevalent laws,
as the modern concept of punishment has been changed perhaps due to the advancement of technology and socio-cultural development. At present, sometimes it is observed that people are committing crimes without caring for punishment. Here, it is to be noted that Kauṭilya’s attitude in providing punishment in some cases appears to be more strict than the prevalent one. The increasing number of crimes in different fields of society, at present, leads us to think that if severe punishment prescribed by Kauṭilya in maintaining the law and order in the society would be prevailing now, then the increasing number of crimes might be restricted and non-caring attitude of criminals towards punishment also might be prevented.

Today, criminal activities have appeared as great challenge before the whole human race. Now, it appears that following Mātsyanyāya, the stronger one is engaged in destroying the weaker one. At present, people in general feel in secured at every moment, without having sufficient safety and security in different spheres of life. The moral values appear to be almost disappeared from the society around us. Under the circumstances, Kauṭilya’s concept of ‘Crime’ and ‘Punishment’ demands a fresh outlook to examine the different perspective and relevance of the same.
A careful study of the Kauṭilyaṇ concept of ‘Crime’ and ‘Punishment’ reveals that a large number of crime along with punishment, dealt with by Kauṭilya is highly relevant today. It appears that in many cases, the Kauṭilyaṇ concept of ‘Crime’ and ‘Punishment’, with regard to different cases, exists in modern law which reveals Kauṭilya’s modern relevance.

It is to be mentioned here that the crimes, especially related to human behaviour, dealt with sincerely and carefully by Kauṭilya, which at present, perhaps are not given so much importance. Such cases we do feel, may be examined by the modern lawgivers, which may help us to form a society full of human values and free from crimes. Kauṭilya, with a view to create a totally crime free society, has carefully examined and taken into account different aspects of human life and crimes, prevailing in the society even today. Kauṭilya’s sincere concern with the welfare and prosperity of the society has been revealed in the large number of crimes, dealt with carefully by him, which has been discussed in detail in the second chapter of the present thesis. A thorough study of Kauṭilya’s concept of ‘Crime’ and ‘Punishment’ reveals that he considered moral values as the foundation, on which a crime free society stands. Therefore, he has dealt with different types of crime which may occur in daily life.
and adopted strict attitude in prescribing punishment for the same, so that the same may not be repeated.

Here, it is significant to mention that varieties of crime dealt with by Kautilya appear to be more relevant today as it was during his days. It is also to be admitted that, today, human beings have made tremendous progress with regard to science and technology, attained maximum comfort in daily life. But it is also possibly an undeniable fact that we have lost human values, the most desirable quality to be a perfect man. It also cannot be forgotten that human birth is rare which can be fruitful only through the service to humanity and service to society for its all-round progress. To form a human friendly and prosperous society, the prevention of crime possibly is the first step, which did arrest the attention of Kautilya, who did not neglect even the nominal crimes.

In fine, it may be said that the crimes related to human behaviour dealt with at large by Kautilya is undoubtedly significant and appears to be very much relevant even today. It is, indeed, amazing to note that Kautilya, being a lawgiver of ancient India was well aware about the crimes, minor or major, which may occur in different corners of the society and at various points of time, which makes him relevant not only to modern time, but also for the years to come.